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Draft Water Supply Appendix for the Supplemental Environmental Impact Report for the NorthLake Specific Plan/VTTM No. 51852, prepared by CH2MHill, January 2007

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Supplemental Environmental Impact Report
for the

NorthLake Specific Plan/ VTTM No. 51852

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Acronyms and Abbreviations

AF	acre-feet
AFY	acre-feet per year
BVWSD	Buena Vista Water Storage District
CCWA	Central Coast Water Agency
CEQA	California Environmental Quality Act
cfs	cubic feet per second
CLWA	Castaic Lake Water Agency
Delta	Sacramento-San Joaquin River Delta
DTSC	California Department of Toxic Substances Control
DWR	California Department of Water Resources
EIR	Environmental Impact Report
EIS	Environmental Impact Statement
ESWFP	Earl Schmidt Water Filtration Plant
EWA	Environmental Water Account
KCWA	Kern County Water Agency
LACSD	Los Angeles County Sanitation District
LACWWD No. 36	Los Angeles County Waterworks District No. 36
LARWQCB	Los Angeles Regional Water Quality Control Board
mgd	million gallons per day
NCWD	Newhall County Water District
PCL	Planning and Conservation League
RRBWSD	Rosedale-Rio Bravo Water Storage District
SCWD	Santa Clarita Water Division of CLWA
SCVWP	Santa Clarita Valley Water Purveyors
SCVWR	Santa Clarita Valley Water Report
SDIP	South Delta Improvements Program
SWP	State Water Project

TMDL	Total Maximum Daily Loads
UWMP	Urban Water Management Plan
USEPA	U.S. Environmental Protection Agency
VWC	Valencia Water Company
WRMWSD	Wheeler Ridge-Maricopa Water Storage District
WRP	water reclamations plant

SECTION 1

Introduction and Background

This Appendix to the Supplemental Environmental Impact Report (EIR) for the NorthLake Specific Plan/Vesting Tentative Tract Map No. 51852 (Project) provides detailed information regarding the Santa Clarita Valley's water supply and the reliability of that supply. Water for this Project would be provided by Newhall County Water District (NCWD), one of four local water purveyors in the Santa Clarita Valley. The local and imported regional water supplies are cooperatively managed by those four water purveyors and the Castaic Lake Water Agency (CLWA), the regional wholesale water agency.

Water supply planning and management applicable to the Santa Clarita Valley is a dynamic process with several ongoing activities to secure additional supplies, improve existing supply reliability, improve surface water quality, upgrade infrastructure, and plan for future conditions. While not directly tied to the NorthLake development, these activities have recently produced several studies, plans, and water management and facilities upgrades that modify the existing environmental conditions with regard to water supply availability and reliability. These studies, plans and water management upgrades include:

- Perchlorate contamination of several groundwater wells in the Santa Clarita Valley and completion of steps towards cleanup
- Completion of steps towards expanded use of recycled water in the Santa Clarita Valley
- Completion of the Groundwater Management Plan in compliance with AB 3030
- Completion of groundwater banking agreements with Semitropic Water Storage District
- Completion of the revised Castaic Lake Water Agency Supplemental Water Project Transfer of 41,000 Acre-Feet of State Water Project (SWP) Table A Amount Final EIR, and continued implementation of the 41,000-acre-foot water transfer from Kern County Water Agency and its member unit in Kern County, the Wheeler Ridge-Maricopa Water Storage District
- Completion of long-term groundwater banking arrangements with Rosedale-Rio Bravo Water Storage District
- Initiation of an imported water augmentation agreement with the Buena Vista Water Storage District and the Rosedale-Rio Bravo Water Storage District
- Completion of water quality and capacity improvements to the Earl Schmidt Water Treatment Plant and planned expansion of the Rio Vista Water Treatment Plant
- Planning and construction of treated water supply pipelines (Pitchess and Honby)
- Completion of the Newhall County Water District's Water Supply Assessment
- Completion of annual updates of the Santa Clarita Valley Water Report

- Completion of the 2005 Urban Water Management Plan
- Completion of the SWP Water Supply Reliability Report
- Completion of the California Department of Water Resources (DWR) technical memorandum describing progress made in incorporating climate change into existing water resources planning and management tools and methodologies

This Appendix provides a summary of each of these activities, their current status, and the anticipated effects on the regional water supply.

1.1 Santa Clarita Valley Water Supply Background

1.1.1 Water Agencies

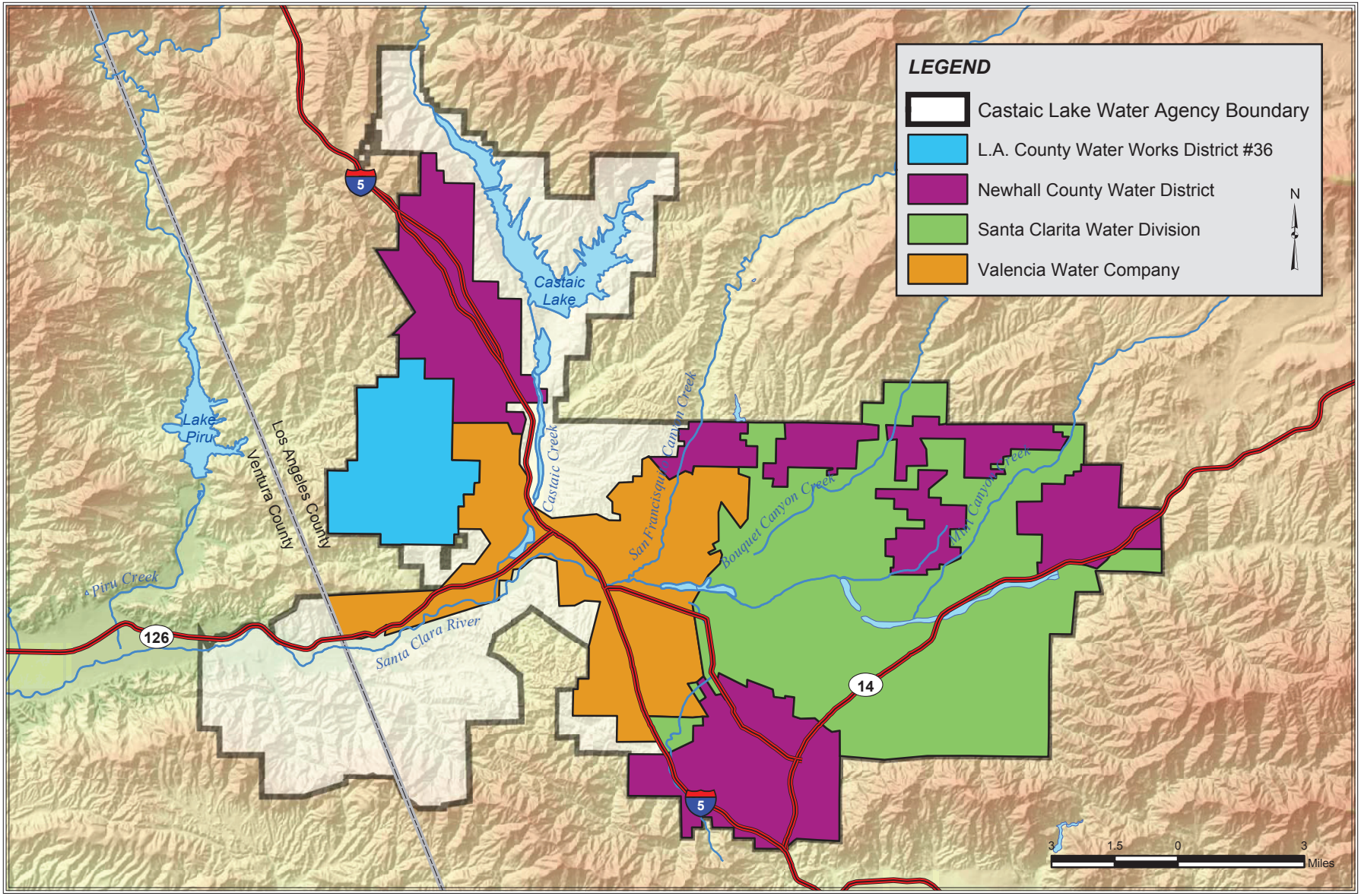
One wholesale water agency (CLWA) and four retail water purveyors provide water service to most residents of the Santa Clarita Valley. The four retail purveyors are NCWD, Los Angeles County Waterworks District No. 36 (LACWWD No. 36), the Santa Clarita Water Division of CLWA (SCWD), and the Valencia Water Company (VWC); these four purveyors are collectively referred to as the Local Purveyors. The service area for CLWA and the Local Purveyors is shown on Figure 1.

NCWD was formed in 1959. It is a municipal utility providing potable water to more than 30,000 people in an area of more than 34 square miles in the Santa Clarita Valley. NCWD's service area is composed of four separate water service areas (Newhall, Castaic, Pinetree, and Tesoro), and includes portions of the City of Santa Clarita and unincorporated portions of Los Angeles County in the communities of Newhall, Canyon Country, Saugus, and Castaic. NCWD supplies water from local groundwater and imported water from CLWA. NCWD delivered approximately 11,000 acre-feet (AF) of water via approximately 9,200 connections in 2005 (CLWA, 2005a). The NCWD service area is shown on Figure 2.

SCWD's service area includes portions of the City of Santa Clarita and unincorporated portions of Los Angeles County in the communities of Canyon Country, Newhall, and Saugus. SCWD supplies water from local groundwater and imported water from CLWA. SCWD delivered approximately 29,000 AF of water via approximately 26,000 connections in 2005 (CLWA, 2005a).

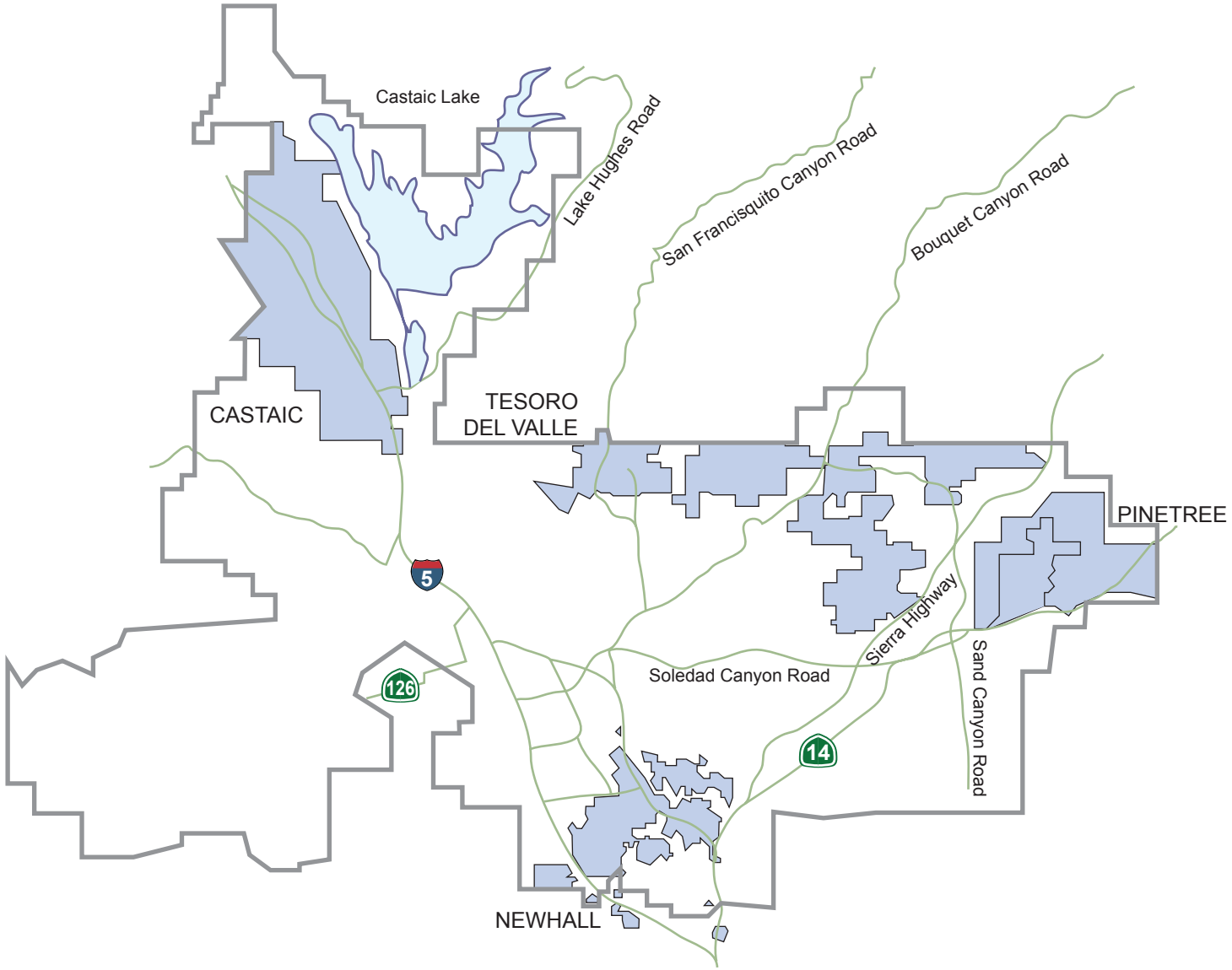
LACWWD No. 36's service area includes the Hasley Canyon area in the unincorporated community of Val Verde. During most years, the District obtains its water supply from CLWA. LACWWD No. 36 delivered approximately 1,200 AF of water via approximately 1,300 connections in 2005 (CLWA, 2005a).

VWC's service area includes a portion of the City of Santa Clarita and unincorporated portions of Los Angeles County in the communities of Castaic, Stevenson Ranch, and Valencia. VWC supplies water from local groundwater, imported water from CLWA, and recycled water. VWC delivered approximately 30,000 AF of water via approximately 31,000 connections in 2005 (CLWA, 2005a).



Source: SCVWP 2006

FIGURE 1
CLWA and Local Purveyors Service Area



Source: NCWD 2006

FIGURE 2
NCWD Service Area

CLWA was formed for the purpose of contracting with DWR to provide a supplemental supply of imported water from the SWP to the Local Purveyors in the Santa Clarita Valley. CLWA serves an area of 195 square miles in Los Angeles and Ventura counties. CLWA, as a SWP Contractor, holds a water supply contract with DWR with a Table A Amount of 95,200 AF[1].

1.1.2 Water Supply

There are two main water supplies for the Santa Clarita Valley—local supplies and imported supplies. Local supplies consist of groundwater and recycled water, and imported supplies consist of SWP water, and SWP-related supplies such as groundwater banking programs, transfers, and purchases. Additional information on these supplies is provided in Sections 2 and 3 of this Appendix. Background information on the SWP system is provided below.

The SWP is a large water supply, storage, and distribution system authorized by an act of the California State Legislature in 1959. Today, the SWP includes 28 storage facilities, reservoirs and lakes; 20 pumping plants; six pumping-generating plants and hydroelectric power plants; and approximately 660 miles of aqueducts and pipelines. The primary water source for the SWP is the drainage of the Feather River, a tributary of the Sacramento River. Runoff released from Oroville Dam in Butte County flows down natural channels to the Sacramento-San Joaquin River Delta (Delta), where some of the water is pumped through the North Bay Aqueduct to Napa and Solano counties. In the southern Delta, water is pumped from the Clifton Court Forebay by the Harvey O. Banks Delta Pumping Plant into the 444-mile-long, Governor Edmund G. Brown California Aqueduct (California Aqueduct). The California Aqueduct conveys water to the primarily agricultural users in the San Joaquin Valley and the primarily urban regions of the San Francisco Bay Area, the Central Coast, and southern California. Water intended for use in southern California is conveyed through the West Branch to Castaic Lake and through the East Branch to Lake Perris, which are referred to as terminal reservoirs for the SWP.

The original plan for the SWP included constructing additional water storage facilities as Contractor demands increased, however, essentially no new construction of additional SWP storage facilities has occurred since the initial SWP facilities were completed. Although future construction or other actions can improve the quantity and reliability of SWP supplies (e.g., the CALFED Bay-Delta Program and the South Delta Improvement Program), these actions entail their own environmental reviews, potential litigation delays, and multi-year construction period; therefore, it is likely to take many years before any additional storage and/or conveyance facilities that improve SWP reliability are operational.

In 1960, DWR began executing individual Water Supply Contracts with public agencies throughout the State of California for financing and constructing SWP facilities designed to

[1] Table A Amount (formerly referred to as "entitlement") is named for the "Table A" in each SWP contractor's Water Supply Contract. It contains an annual buildup in Table A Amounts of SWP water, from the first year of the Water Supply Contract through a specific year, based on growth projections made before the Water Supply Contract was executed. CLWA has augmented its Table A Amount through the acquisition of contract rights from the Devil's Den Water District (in 1991) and from the acquisition of contract rights from the Kern County Water Agency via the Wheeler Ridge-Maricopa Water Storage District (in 1999). The total of all SWP Contractors' maximum Table A Amounts is currently about 4.17 million AF.

deliver water to each public agency. ("SWP contractors" or "contractors" collectively refer to the public agencies that hold SWP Water Supply Contracts with DWR.)

Each Water Supply Contract identifies a Table A Amount, the annual maximum amount of water to which an SWP Contractor has a contract right. Each Contractor annually submits a request to DWR for water delivery in the following year, in any amount up to the Contractor's Table A Amount. The Water Supply Contracts provide that in a year when DWR is unable to deliver total Contractor requests, deliveries to all contractors will be reduced so that total deliveries equal total available supply for that year. While SWP contractors currently hold Table A Amounts totaling approximately 4.173 million AF, the amount of water actually requested by contractors is less than that due to a number of contractors whose demands have not yet increased to their full Table A Amount. Even at these lower current demands, however, the SWP cannot meet all water delivery requests in some years, particularly in dry years, due to operational, hydrologic, and environmental constraints.

1.2 Contents of this Appendix

This Appendix contains the following sections in addition to this Introduction:

- Section 2.0, Relevant New Information. This section provides summaries of the studies, plans, and water management upgrades recently completed in the Santa Clarita Valley.
- Section 3.0, Updated Water Supply Characteristics. This section provides an update of regional water supply availability, quality, and reliability.
- Sections 4.0, References. This section provides a list of references cited in this Appendix.

SECTION 2

New Relevant Information

This section summarizes the recent information on water supply, water quality, and water supply reliability. The documents and reports summarized below are publicly available from NCWD, CLWA, or DWR. Further information on each of the documents and reports can be found in Section 3 of this Appendix.

2.1 Local Supplies

Water derived from local sources includes groundwater pumped from the Santa Clara River Valley Groundwater Basin in the Santa Clarita Valley or from recycled water following treatment and disinfectant at local wastewater treatment plants. Recently developed information about these local sources is provided below.

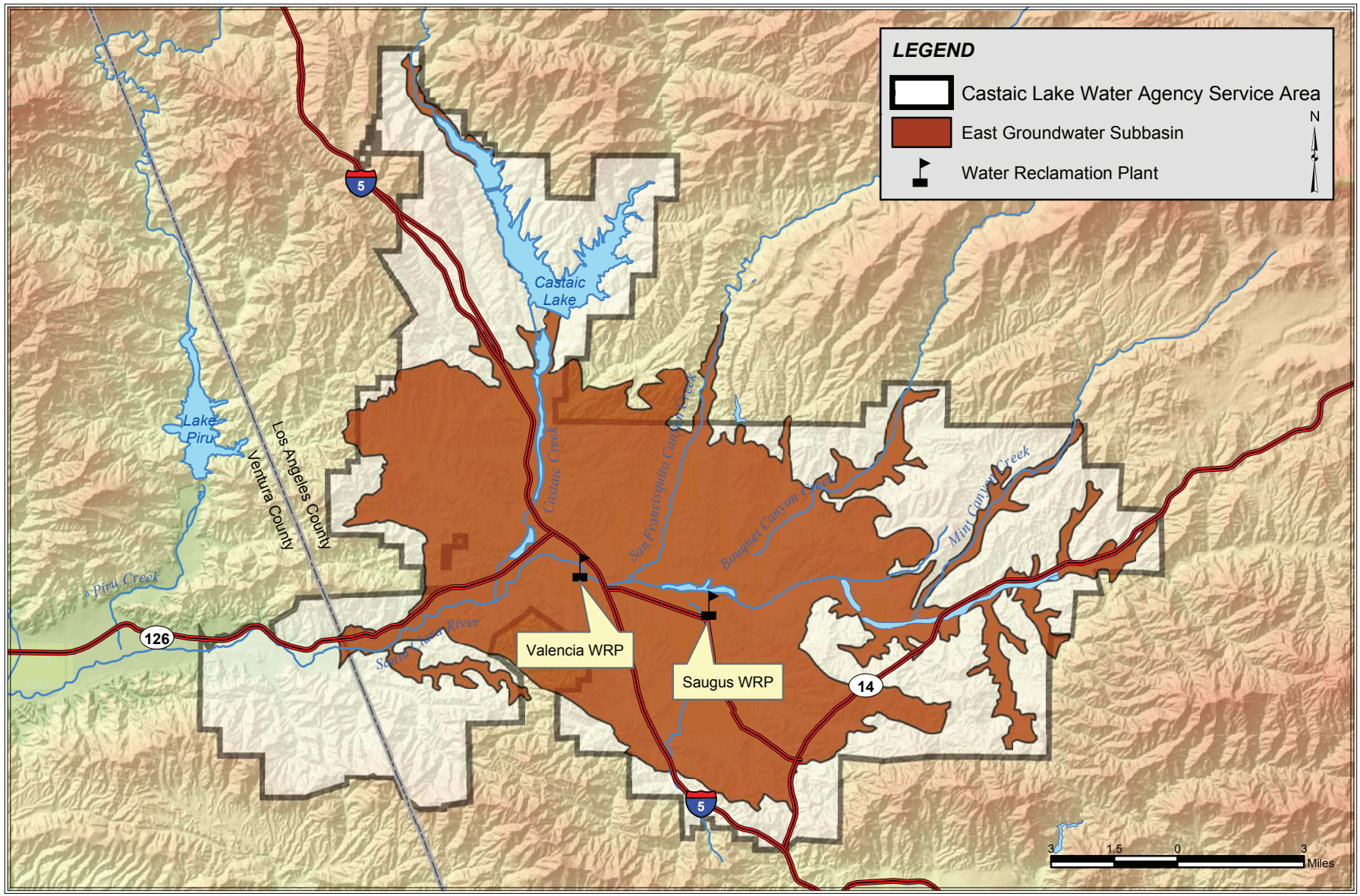
2.1.1 Groundwater

The local groundwater source for the Santa Clarita Valley is the Santa Clara River Valley Groundwater Basin and specifically the Alluvial and Saugus Formation aquifers of the East Subbasin. The East Subbasin and the location of the Alluvial and Saugus Formation aquifers are shown on Figures 3 and 4.

2.1.1.1 Groundwater Management Plan

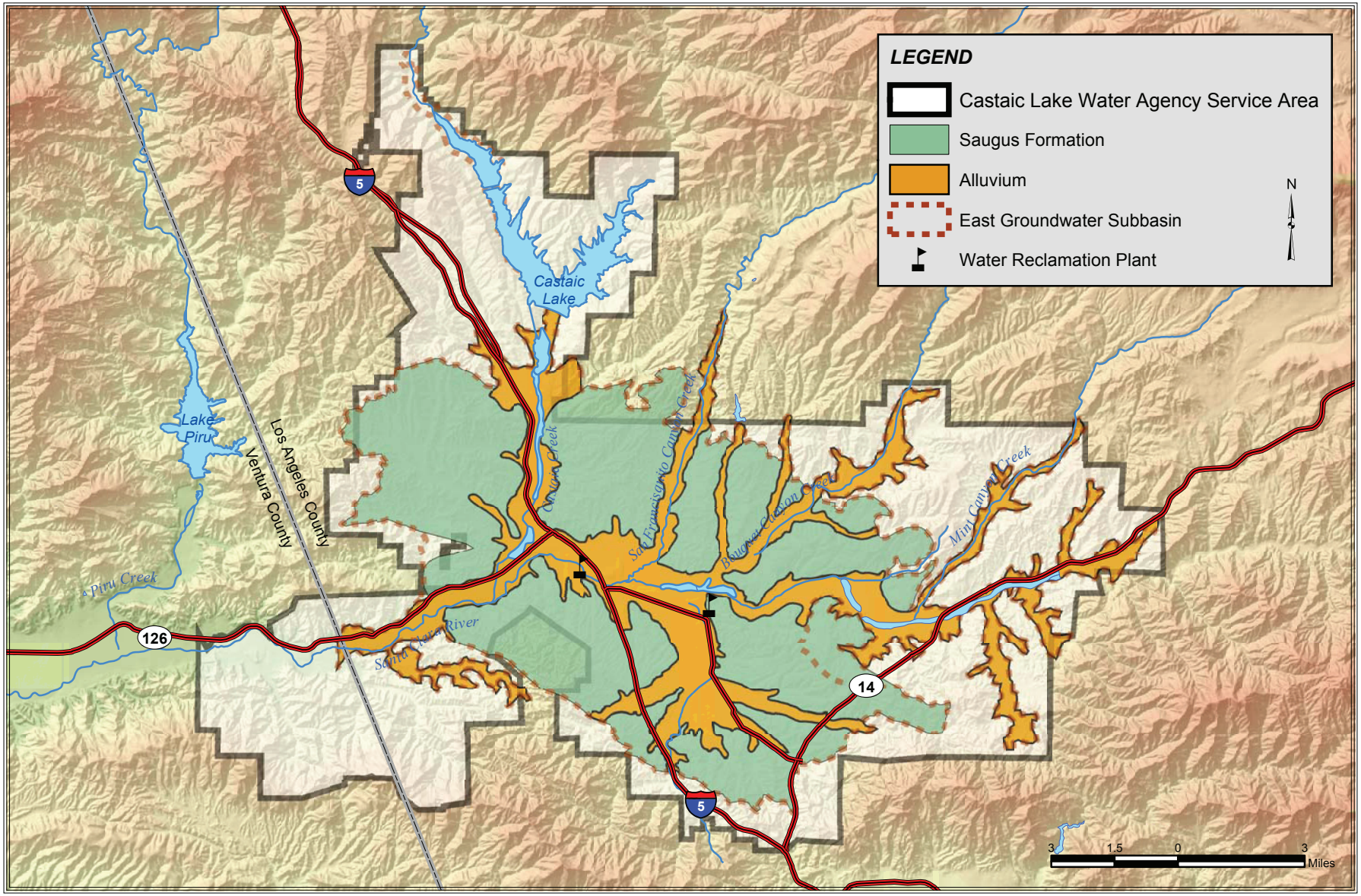
CLWA and the Local Purveyors adopted a regional Groundwater Management Plan in December 2003 (CLWA, 2003c). This Plan satisfies all applicable requirements (including those outlined in Assembly Bill [AB] 134 and AB 3030 and associated sections of the California Water Code). The Groundwater Management Plan outlines four specific management goals for the East Subbasin (CLWA, 2003c):

1. Development of integrated surface water, groundwater, and recycled water supplies to meet existing and projected demands for municipal, agricultural, and other water supply
2. Assessment of groundwater basin conditions to determine a range of operational yield values that will make use of local groundwater conjunctively with SWP and recycled water to avoid groundwater overdraft
3. Preservation of groundwater quality, including active characterization and resolution of any groundwater contamination problems
4. Preservation of interrelated surface water resources, which includes managing groundwater to not adversely impact surface and groundwater discharges or quality to downstream basin(s)



Source: SCVWP 2006

FIGURE 3
Santa Clara River Valley East Groundwater Subbasin



Source: SCVWP 2006

FIGURE 4
Alluvium and Saugus Formation

As described in the Plan, implementation of the specific management goals for the Alluvial aquifer system would result in the preservation of the groundwater levels and quality that is consistent with the last 30 years of use of that resource. While some specific changes in groundwater levels have been observed over the last 20 years, there has been no chronic decline in groundwater level or aquifer storage. Management actions to reduce water surface fluctuations, sustain aquifer recharge and avoid storage overdraft will accomplish the basin objectives while continuing to use local groundwater to meet part of the existing and anticipated water requirements of the Santa Clarita Valley.

Implementation of the specific management goals for the Saugus Formation aquifer would also result in the preservation of the groundwater levels and quality. However, pumping rates from the Saugus Formation aquifer may be intermittently higher than the historic pumping rates during periods of low SWP supply or other emergency conditions. Such increases in pumping rate would withdraw a small portion of the total aquifer storage and successfully contribute to local water supplies while still meeting the management objective. Water stored in the Saugus Formation would be expected to recover via a reduction in pumping during wet or normal conditions.

Development and adoption of the regional Groundwater Management Plan does not change the water supply available for use in the Santa Clarita Valley. However, the Plan does provide additional assurances regarding groundwater use and protection of that use through the four management goals listed above.

2.1.1.2 Ammonium Perchlorate Contamination

Perchlorate, originating at the former Whittaker-Bermite propellant production facility, has been a water quality concern in groundwater basins of the Santa Clarita Valley since it was first detected in four wells in the Saugus Formation in 1997. In November 2002, perchlorate was detected in one Alluvial well (Stadium well) near the Whittaker-Bermite site, and in early 2005, perchlorate was detected in a second Alluvial well. All six wells were removed from active water service, and one of the Alluvial wells has been returned to active water supply service with the operation of wellhead perchlorate removal technology approved for operation by California Department of Health Services (Santa Clarita Valley Water Purveyors [SCVWP] 2006). In addition, based on zone specific modeling very low levels of perchlorate contamination, i.e., approximately 2 parts per billion, were projected in well NC-13 (personal communication, S. Cole, 2006). However, this level is well below the action level and the well remains in operation (personal communication, S. Cole, 2006).

In November 2000, CLWA and the Local Purveyors filed a suit against the then current and former owners of the Whittaker-Bermite site. The suit seeks to have the defendants cover all costs of response, contaminant removal, remedial actions, and any liabilities or damages caused by the contamination. In 2003, the parties reached an interim settlement and funding agreement, which since expired in January 2005. However, negotiations continue toward reaching a final settlement (SCVWP, 2006). The parties to the lawsuit have also jointly developed a plan to pump and treat contaminated water from some of the impacted wells to stop the movement of the plume.

CLWA and the affected Local Purveyors have undertaken a comprehensive groundwater containment, treatment, and restoration project to address perchlorate contamination

(CLWA, 2005c). The project would intercept the perchlorate plume in the Saugus Formation groundwater. Contaminated water would be pumped from intercepting wells to the new treatment facility where the chemical would be removed and the treated water used as part of the Santa Clarita Valley drinking water supply (SCVWP, 2006 and CLWA, 2005c). Construction is scheduled to begin in early 2007, and startup and monitoring is planned to begin in mid-2007.

Remediation of the contaminated aquifers and lands will restore the production capacity of the affected wells. Remediation will also eliminate the risk of further contamination of water stored in either the Saugus Formation or Alluvial aquifers.

2.1.2 Recycled Water

As water demands in the Santa Clarita Valley increase in the future, recycled water will be an important factor in improving water supply reliability. Los Angeles County Sanitation District (LACSD) owns and operates two water reclamations plants (WRP) in the CLWA service area, the Saugus WRP and the Valencia WRP; and is the main supplier of wastewater for recycling in the CLWA service area. Distribution of the recycled water is the responsibility of CLWA.

The Saugus WRP, located in District No. 26, was completed in 1962 and has undergone two expansions since that time. Its current design capacity is 6.5 million gallons per day (mgd). Use of tertiary treated water from this plant for water recycling is permitted under the Los Angeles Regional Water Quality Control Board (LARWQCB) Order No. 87-49; however, there is concern that reducing discharges from this plant may impact habitat in the Santa Clara River downstream of the WRP (both the Saugus and Valencia WRP discharge treated water to the Santa Clara River). Because of these concerns, only water from the Valencia WRP is used for recycled purposes.

The Valencia WRP was completed in 1967. After three subsequent expansions, its current capacity is 21.6 mgd. Use of recycled water from this plant is permitted under LARWQCB Order No. 87-48. In July 1996, CLWA entered into an agreement with LACSD to purchase up to 1,700 acre-feet per year (AFY) of recycled water from the Valencia WRP. In 2002, CLWA constructed facilities needed to utilize this supply and began recycled water deliveries in 2003.

The Saugus and Valencia WRP's together have a design capacity of 28.1 mgd. To accommodate future growth in the Santa Clarita Valley and meet LARWQCB standards, LACSD is expanding the Valencia WRP. The Phase I expansion was completed in 2002. Phase 2 is expected to be completed in 2010 and would expand the capacity by an additional 6 mgd. There are no current plans to expand the Saugus WRP. With completion of the Phase II expansion at the Valencia WRP, total combined capacity at the WRPs would be 34.1 mgd (38,200 AFY). Table 1 provides the existing and projected future wastewater capacity for the Saugus and Valencia WRPs.

TABLE 1
Saugus and Valencia WRP Wastewater Collection and Capacity

Type of Wastewater	Capacity (AF)						
	2002	2005	2010	2015	2020	2025	2030
Wastewater Collected and Treated in the Service Area	20,542	31,500	38,200	38,200	38,200	38,200	38,200
Quantity that meets Recycled Water Standards	20,542	31,500	38,200	38,200	38,200	38,200	38,200

Source: CLWA 2005a

Use of recycled water by CLWA is constrained by water rights holders downstream of the Saugus and Valencia WTPs. According to Section 1211 of the California Water Code, downstream water rights holders are protected if the source of return flow is "native water." Native water is water that, under natural conditions, would contribute to a given stream or other body of water. The use of "foreign water," such as imported SWP water, by downstream water rights holders is not protected under the Water Code. Groundwater pumped from and used in the Valley is considered "native water," while imported SWP water is considered "foreign water." Therefore, only the percentage of foreign water discharged from the WRPs can be diverted for recycling purposes. While CLWA has been approved to use 1,700 AFY of recycled water, it may only do so if the amount of foreign water to be discharged from the WRP's meets or exceeds this amount.

Table 2 provides the current and projected future demand and availably of recycled water. In 2005, foreign water comprised 64 percent of the Valley's potable water supply, while the remaining 36 percent consisted of native water. Future (2030) projected potable water demand is expected to be met with 65 percent foreign and 35 percent native water. This means that projected recycled water availability will be 65 percent of generated wastewater. As shown in Table 2, the demand for, and availability of, recycled water is expected to increase beyond CLWA's currently approved use of 1,700 AFY.

TABLE 2
Current and Projected Demand and Availability of Recycled Water

	Native Water Demand (AFY) (a)	Foreign Water Demand (AFY)[1] (b)	Recycled Water Demand (AFY) (c)	Potable Water Demand Total (AFY) (a+b+c)	Waste-water Flow (AFY)	Foreign Water Percentage of Potable Water Demand	Foreign Water Portion of Wastewater (AFY)
2005[2]	25,500	46,100	800	71,600	31,500	64%	20,100
2030 Projected	39,700	72,800	17,931	112,500	38,200	65%	24,830

Source: CLWA 2005a

Notes:
1. Foreign water includes SWP water, water transfers, and desalination.
2. 2005 values were developed prior to the availability of 2005 use data, and therefore, are projected values.

In addition to the previously discussed sources of recycled water, the Newhall Ranch development is planning to construct a water reclamation plant and this new source of nonpotable water may become available to CLWA in the future. Berry Petroleum, another potential recycled water supplier, is considering treating the produced water from the Placerita Oilfield and making it available for CLWA to purchase. This recycled water source would be available on a short-term basis only because it is a by-product of oil extraction. The use of these supplemental recycled water sources for irrigation and to meet nonpotable demand would allow CLWA to more efficiently use and distribute its potable water, increasing the reliability of water supplies in the Santa Clarita Valley.

While actual recycled water demand was only 448 AF in 2004, projected future recycled water demands are expected to steadily increase to 3,300 AF in 2015 to over 17,000 AF in 2030 (CLWA, 2005a). Recycled water is used for nonpotable, landscape purposes.

2.2 Imported Supplies

Imported water supplies consist primarily of SWP or SWP-related supplies (such as transfers and groundwater banking programs).

2.2.1 Semitropic Groundwater Banking Projects

CLWA has two groundwater banking agreements with the Semitropic Water Storage District. In 2002, CLWA stored an available portion of its Table A Amount (24,000 AF) in an account in Semitropic's program. In 2004, 32,522 AF of available 2003 Table A Amount water was stored in a second Semitropic account. CLWA can withdraw up to 50,870 AF (90 percent of the banked amount) of water to meet its demands over a ten-year period (until 2012/13). Once the current storage amount is withdrawn, the supply would no longer be available. Water not recovered by CLWA after 2013 will be forfeited. CLWA anticipates using the stored water for a dry-year supply (CLWA, 2005a).

A legal challenge was filed on California Environmental Quality Act (CEQA) grounds to CLWA's approval of its 2002 Groundwater Banking Project and its related Negative Declaration (California Water Network v. Castaic Lake Water Agency [Ventura Superior Court Case No. CIV 215327]). The Trial Court ruled in favor of CLWA, and found that the approval of the project and the Negative Declaration did not violate CEQA. The Court of Appeal decided the case in favor of CLWA and rejected all of the petitioners claims on appeal. The decision is now final. No legal challenges were filed to CLWA's approval of the 2003 Groundwater Banking Project or its related Negative Declaration.

Implementation of groundwater banking agreements with Semitropic does not change the long-term, year-by-year water supply available for use in the Santa Clarita Valley. However, implementation of these agreements does improve the reliability of supplies for use with the CLWA service area because water stored in Semitropic could be used to augment dry-year supplies sometime in the future.

2.2.2 CLWA Supplemental Water Project (41,000-Acre-foot Table A Transfer)

The principal component of the CLWA Supplemental Water Project is the execution of an agreement for the transfer for 41,000 AF of SWP Table A Amount and the associated

conveyance and delivery terms from Kern County Water Agency (KCWA) to CLWA. In 1999, CLWA entered into such a contract with KCWA and its member unit, the Wheeler Ridge-Maricopa Water Storage District (WRMWSD). DWR concurred on this arrangement and modified CLWA's water delivery contract to conform to the agreement.

This transfer of contract rights from KCWA to CLWA to the SWP was part of the "Monterey Amendments." These amendments to the water delivery contract for the SWP are based on a statement of principles that were incorporated into an omnibus revision of the long-term contracts between DWR and most of the agencies that hold contracts governing the delivery of water and other rights under the SWP.

Prior to the enactment of the Monterey Amendments and in compliance with an agreement among the SWP contractors and DWR, the Central Coast Water Agency (CCWA), one of the SWP contractors, acted as the lead agency for the preparation of a program EIR, which was used to support Monterey Amendments (the "Monterey Agreement Program EIR"). Each of the other affected SWP contractors and DWR later adopted the Monterey Agreement Program EIR. These actions were challenged in court by the Planning and Conservation League, Citizens Planning Association, and Plumas County. In the absence of a restraint from the courts, DWR modified the contracts to the SWP and implemented the various components of the Monterey Agreement. At this point, the omnibus revision of the long-term contracts became know as the Monterey Amendments.

CLWA later prepared and certified a Supplemental Water Project EIR (CLWA, 1999) to evaluate the agreement with KCWA, including the 41,000-AF transfer. As a project contained within the Monterey Agreement Program EIR, the Supplemental Water Project EIR was tiered off of the Monterey Agreement Program EIR.

After CLWA's certification of the Supplemental Water Project EIR, the Monterey Agreement Program EIR was decertified by the Court of Appeal in *Planning and Conservation League v. Dept. of Water Resources* (2000) 83 Cal.App.4th 892 (*PCL*). The Court of Appeal in *PCL* held that DWR should have been the lead agency for the program EIR, instead of CCWA, and required DWR to prepare and certify its own EIR for the Monterey Agreement. The Court did not invalidate the Monterey Agreement or enjoin the resulting implementing transfer contracts. Instead, the Court directed the trial court to consider whether the Monterey Agreement should remain in place pending DWR's preparation of a new EIR under Public Resources Section 21168.9 and to retain jurisdiction pending certification of the new EIR.

Following decertification of the original Monterey EIR, the PCL litigants entered into the Monterey Settlement Agreement in 2003, designating DWR as the lead agency for the preparation of an EIR to address the Monterey Agreement. DWR is currently in the process of preparing that EIR. The Monterey Settlement Agreement also declared that certain water transfers between contracting agencies were "final." The 41,000-AFY Kern-Castaic transfer (discussed further below) was not among those "final" transfers but rather was recognized as a permanent transfer, which was still subject to the then-pending litigation in Los Angeles Superior Court challenging the EIR prepared for that transfer. (*Friends of the Santa Clarita River v. Castaic Lake Water Agency*, see discussion below.) DWR's Monterey EIR will analyze the potential environmental effects relating to the Monterey transfers, including a focused analysis of the 41,000-AFY transfer, which will be provided as part of a broader analysis of past and future permanent transfers of Table A Amounts.

Because it was tiered from a now decertified program EIR, the Court of Appeal decertified CLWA's Supplemental Water Project EIR in *Friends of the Santa Clara River v. Castaic Lake Water Agency* (2002) 95 Cal. App. 3d 1373 (*Friends)*.

The Court of Appeal in *Friends* decertified CLWA's Supplemental Water Project EIR solely because it tiered from the now decertified Monterey Agreement Program EIR. The Court expressly found that all other contentions concerning the legal adequacy of the EIR were without merit. "If the PCL/tiering problem had not arisen, we would have affirmed the judgment." *Friends*, *supra*, at 1387.

Similarly, the Court of Appeal in *Friends* did not enjoin the Supplemental Water Project or its 41,000 AF transfer. It instead ordered the trial court to consider whether the contract authorizing the 41,000 AF-transfer should remain in place pending CLWA's preparation of a new EIR that is not tiered from the now decertified program EIR under Public Resources Code Section 21168. Accordingly, the Court did not issue any ruling affecting CLWA's ability to continue to use and rely on the 41,000 AF, leaving it to the trial court to determine whether to enjoin CLWA's use of the water pending its completion of a new EIR. *Friends*, *supra*, at 1388.

In September 2002, on remand to the Los Angeles County Superior Court, the *Friends* petitioners applied under Public Resources Section 21168.9 to enjoin CLWA from continuing to use and rely on water from the 41,000-AF transfer. The trial court rejected that request. In December 2003, the Court of Appeal affirmed the trial court's ruling and refused to enjoin CLWA from continuing to use and rely on water from the 41,000-AF transfer pending completion of a new EIR. The *Friends* petitioners were permitted to renew its application based upon evidence of the actual use of such additional water for purposes it considers improper.

Meanwhile, before the trial court in *Friends* acted on remand, the parties to the *PCL* litigation entered into a settlement agreement, which was later approved by the Sacramento County Superior Court. The settlement agreement provides that SWP would continue to be administered and operated in accord with both the Monterey Amendments and the terms of the settlement agreement. The settlement agreement did not invalidate or vacate the Monterey Amendments or any water transfer effected under them, including the CLWA-KCWA transfer. The settlement agreement recognized the pending litigation on the 41,000-AF transfer and the parties to the settlement agreement agreed that the litigation should remain in the Los Angeles County Superior Court. The water transfer was effected and permanent under the settlement agreement.

The CLWA Board of Directors decertified its 1999 Supplemental Water Project Final EIR on November 27, 2002. CLWA then prepared and certified a new Supplemental Water Project EIR in December 2004. The new Supplemental Water Project EIR, prepared in accordance with the decisions of the Second Appellate Court, Fourth Division and the Superior Court of Los Angeles, re-evaluated the potential environmental impacts of the transfer of the 41,000 AF of SWP Table A Amount, without tiering from the Monterey Agreement EIR (CLWA, 2004). This EIR also evaluated the use of SWP facilities from Northern California to Los Angeles County for the delivery of SWP water to the CLWA service area, and use of this water within the CLWA service area (CLWA, 2004). The new certified EIR was lodged with the Los Angeles Superior Court as part of its return to the trial court's writ of mandate in

Friends. Thereafter, the *Friends* petitioners voluntarily dismissed the *Friends* action with prejudice in February 2005.

Two legal challenges to CLWA's new Supplemental Water Project EIR were filed in January 2005 in the Ventura County Superior Court (*Planning and Conservation League v. CLWA* and *California Water Impact Network v. CLWA*). These challenges were transferred to the Los Angeles Superior Court. The challenges are still pending.

Although CLWA's new Supplemental Water Project EIR is currently being challenged in court, CEQA requires that the EIR be conclusively presumed to comply with CEQA until a court has judged it deficient. See Public Resources Code Section 21167.3(b), CEQA Guidelines Section 15231. However, the new pending challenges to the adequacy of CLWA's revised EIR for the 41,000-AFY transfer, and DWR's pending preparation of a new Monterey EIR, arguably introduce an element of potential uncertainty regarding the 41,000-AFY transfer, although based on a review of all the surrounding circumstances, these events do not significantly affect the reliability of the transfer amount, and, therefore, it is still appropriate for NCWD to conclude that CLWA properly included the transfer amount as part of CLWA's 95,200-AFY Table A Amount for several reasons.

First, the 41,000 AFY transfer was completed in 1999 in a DWR/CLWA water supply contract amendment approved by DWR. Since 2000, DWR has allocated and annually delivered the water in accordance with the completed transfer.[2] In connection with that transfer, CLWA paid approximately $47 million for the additional 41,000-AFY Table A supply, the monies have been accepted by the Wheeler Ridge-Maricopa Water Storage District, (a member unit of the Kern County Water Agency), the sale price has been financed through the sale of CLWA tax-exempt bonds, and DWR has expressly approved and amended CLWA's long-term water supply contract to reflect the increase in CLWA's SWP Table A Amount and the permanent transfer/reallocation of SWP Table A supply between SWP contractors. This contract has never been set aside but continues in full force and effect.

Second, the Court of Appeal held that the only defect in the 1999 CLWA EIR was that it tiered from the Monterey EIR, which was later decertified. This defect has now been remedied by CLWA's preparation and certification of a revised EIR that did not tier from the Monterey EIR. This new CLWA EIR is by law deemed to be legally adequate until it is established by a court that the EIR is not supported by substantial evidence.

Third, the Monterey Settlement Agreement expressly authorized the operation of the SWP in accordance with the Monterey Amendments. The Monterey Amendments, which are still in effect and have not been set aside by any court, authorized SWP contractors to transfer unneeded SWP supply amounts to other contractors on a permanent basis. Specifically, the Monterey Agreement provisions authorized 130,000 AF of agricultural SWP contractors' entitlements to be available for sale to urban SWP contractors. CLWA's 41,000-AF acquisition was a part of the 130,000 AF of SWP Table A supply that was transferred, consistent with the Monterey Amendments. Although DWR is still in the process of preparing the EIR to address the Monterey Agreement, the court in the PCL litigation refused to set aside the Monterey Agreement pending preparation of that EIR.

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[2] This contract was never legally challenged and, therefore, is considered permanent and in full force and effect.

Fourth, the Court of Appeal in Friends refused to enjoin the 41,000 AFY transfer, and instead required CLWA to prepare a revised EIR, which EIR CLWA has now completed and certified.

Fifth, CLWA's amended water supply contract documenting the 41,000-AFY transfer remains in full force and effect, and no court has ever questioned the validity of the contract or enjoined the use of this portion of CLWA's Table A Amount.

For all these reasons, NCWD is entitled to rely on CLWA's determination that it is reasonable to include the 41,000-AFY transfer in its calculation of available water supplies.

With respect to the new Monterey EIR, CLWA has concluded that its use of the 41,000 AFY is not required to await completion of the Monterey Agreement litigation or DWR's new EIR for the Monterey Agreement and may occur independently of that Agreement because the 41,000 AFY has independent utility from the Monterey Agreement EIR. That DWR did not oppose CLWA's completion and certification of the new EIR for the water transfer, independent of DWR's new Monterey Agreement EIR, supports this view. Thus, the pending legal challenges to CLWA's revised EIR and DWR's preparation of a new Monterey EIR are not expected to impact the amount of water available to CLWA as a result of the completed 41,000-AFY transfer.

Other court actions have addressed water planning issues in the Santa Clarita Valley and the CLWA Supplemental Water Project specifically. For example, the Court of Appeal in *California Oak Foundation v. City of Santa Clarita* (2005) 133 Cal.App.4th struck down the City of Santa Clarita's certification of an EIR for the Gate-King industrial project because it did not address the legal uncertainties surrounding the 41,000-AF transfer. The City's EIR included no discussion of the uncertainty regarding the 41,000-AF transfer other than references to it in the appendices and responses to comments. The Court of Appeal found this to be an inadequate analysis because it failed to inform the public of the litigation uncertainties surrounding the transfer.

The Court of Appeal's ruling in *California Oak* does not prohibit reliance on the CLWA Supplemental Water Project, including the 41,000-AF transfer. The Court criticized the City's reasoning for relying on the CLWA-imported water supply (including the 41,000-AF Table A transfer), but it did not bar the City or any other agency from relying on the transfer for planning purposes.

Instead, the Court of Appeal held that the EIR must include either: (1) an analysis of why it is appropriate to rely on the 41,000 AF transfer; or in the alternative, or (2) an analysis of how the demand for water would be met without the 41,000-AF entitlement. The Court held that it was still up to the City to determine whether reliance on the 41,000 AF is reasonable.

Accordingly, under *California Oak*, so long as the agency has analyzed the uncertainties surrounding this water supply, it is within the agency's province to decide whether to rely on the transfer for planning purposes.

Another court case involved a separate legal challenge to an EIR under CEQA for the West Creek project located in Los Angeles County. This separate legal challenge was brought in Santa Barbara County Superior Court in Santa Clarita Organization for Planning the Environment v. County of Los Angeles, Case No. 1043805 (West Creek litigation). After a

hearing, the Santa Barbara Superior Court issued an Order determining that the EIR prepared for the West Creek project contained substantial evidence in the record to support the County's decision to rely on the 41,000 AFY transfer for planning purposes. The Order noted that substantial evidence appeared in the record to support the County's decision to rely on the 41,000 AFY transfer, while acknowledging and disclosing the potential uncertainties involving the 41,000 AFY transfer created by pending litigation. The Order summarized the evidence, including the fact that: (a) DWR continues to allocate and deliver the water in accordance with the amended water supply contract authorizing the 41,000 AFY transfer; (b) neither the Monterey Agreement litigation, nor the Monterey Settlement Agreement set aside any of the water transfers made under the Monterey Agreement, including the 41,000 AFY transfer; (c) the courts have not enjoined CLWA's use of the 41,000 AFY transfer; and (d) CLWA has prepared and certified a revised EIR on the 41,000 AFY transfer and that EIR is presumed adequate despite pending legal challenges. The West Creek decision is currently on appeal.

Despite the litigation uncertainties surrounding the 41,000-AF transfer since its inception, the transfer was completed in 1999 and the water has been continuously delivered to CLWA. CLWA has paid approximately $47 million for the additional Table A Amount based on the transfer. The monies have been delivered. The sales price was financed by tax-exempt bonds. DWR recognized the transfer as permanent under the Monterey Agreement by entering into Amendment No. 18 to CLWA's agreement, which increases its Table A Amount by 41,000 AF. The water supplies have consistently been allocated to CLWA based on that entitlement ever since.

A future adverse judgment invalidating the Monterey Agreement or the 41,000-AF transfer could affect CLWA's and NCWD's ability to use water from the 41,000-AF transfer and adversely affect CLWA's and NCWD's water supplies over the long term. The new pending challenges to the adequacy of CLWA's new Supplemental Water Project EIR and DWR's pending preparation of a new Monterey Agreement Program EIR therefore create potential uncertainty regarding the 41,000-AF transfer.

However, it is not reasonable to believe that pending litigation is likely to unwind executed and completed agreements with respect to the permanent transfer of SWP water amounts, including the 41,000-AF transfer.

After review of the current available information, NCWD has determined that it is appropriate to rely upon the 41,000-AF transfer for planning purposes for the following reasons:

1. The Monterey Agreement and resulting implementing transfer amendments remain in full force and effect, and no court has questioned the validity of the Monterey Agreement or the resulting implementing contracts.

2. The Court of Appeal refused to enjoin the reasonable use of water from the CLWA Supplemental Water Project including the 41,000-AF transfer in *Friends*.

3. The existing SWP Water Delivery contract (including the 41,000 AF transfer amendment) remains in full force and effect, and no court has ever questioned the validity of the contract or enjoined use of this portion of CLWA's Table A Amount.

4. DWR is preparing an EIR that will analyze all of the water transfers that were facilitated by the Monterey Amendments; this does not preclude CLWA from preparing and certifying its own EIR for the 41,000-AF transfer, as instructed by *Friends*.

5. CLWA has certified the Supplemental Water Project EIR, including the 41,000-AF Table A Amount transfer, without tiering from the Monterey Agreement EIR.

6. The 1999 CLWA Supplemental Water Project EIR for the 41,000-AF transfer was overturned solely because it tiered from a later-decertified Monterey Agreement EIR.

7. CLWA's new Supplemental Water Project EIR corrects the sole defect identified by the Court of Appeal (i.e., tiering off the Monterey Agreement Program EIR).

8. CLWA's new Supplemental Water Project EIR is by law deemed to be legally adequate until it is established by a court that the EIR is not supported by substantial evidence.

9. Nothing in the Monterey Amendments settlement agreement precludes reliance on the 41,000-AF transfer.

10. Nothing in the Monterey Amendments settlement agreement precludes CLWA from preparing and certifying its new Supplemental Water Project EIR for the 41,000-AF transfer, as instructed by the Court of Appeal in *Friends*.

11. The Monterey Amendments settlement agreement expressly authorizes the operation of the SWP in accordance with the Monterey Amendments, which authorize the 41,000-AF transfer.

12. The 41,000-AF transfer was completed in 1999 and DWR has allocated and annually delivered water in accordance with the completed transfer. A price was set, the money was paid (financed by tax-exempt bonds), DWR amended CLWA's contract to include the additional entitlement, and the water has been continuously allocated and annually delivered to CLWA since 2000.

13. The Los Angeles County Superior Court in Sierra Club, et al. v. City of Santa Clarita, et al., Case No. BS 098 722 recently upheld the City of Santa Clarita's EIR for Newhall Land and Farming's Riverpark project and expressly found that the City properly relied on the 41,000-AF water transfer for planning purposes. See Attachment A.

2.2.3 Rosedale-Rio Bravo Water Storage District Groundwater Storage, Banking, Exchange, Extraction and Conjunctive Use Program

In an effort to enhance water supply reliability over the long-term, CLWA has entered into a water banking agreement with the Rosedale-Rio Bravo Water Storage District (RRBWSD). The EIR evaluating the potential environmental effects of this agreement was certified and the agreement was approved by CLWA in fall 2005. Under the RRBWSD Groundwater Storage, Banking, Exchange, Extraction and Conjunctive Use Program (RRBWSD Storage and Recovery Program), CLWA could store up to 20,000 AFY of its total SWP Table A Amount for later withdrawal and delivery to the CLWA service area in a future year or

years when demand in the CLWA service area is greater than supply (i.e., in drier years; CLWA, 2005b). Additional yearly storage capacity may be provided from time to time as determined by RRBWSD, however, the maximum amount of stored water that CLWA will have in the RRBWSD Storage and Recovery Program at any time is 100,000 AF. Over the life of the project (through 2035), CLWA will be able to store a total of 200,000 AF in the RRBWSD Storage and Recovery Program (CLWA, 2005b).

Under the RRBWSD Storage and Recovery Program, CLWA may elect to deliver to RRBWSD its excess Table A Amount or other SWP supplies available to CLWA. RRBWSD would use this water in lieu of pumping groundwater for irrigation or would directly recharge it to the underlying groundwater basin in recharge/percolation ponds. Upon request, RRBWSD would return CLWA's previously stored SWP water in one or more years, by either (1) requesting that an equivalent amount of RRBWSD's SWP water be delivered to CLWA (exchange); or (2) by pumping the water from its groundwater basin (pumpback) to the Cross Valley Canal into the California Aqueduct, at which time the water would commingle with the SWP water in the California Aqueduct and would be conveyed to CLWA. The water RRBWSD returns to CLWA would be delivered through the California Aqueduct to CLWA on a space-available basis within the capacity of SWP facilities. CLWA will be able to request the withdrawal of 20,000 AFY plus any additional and available extraction capacity as determined by RRBWSD. If RRBWSD constructs additional extraction facilities in the future, CLWA could potentially request up to 45,000 AFY of its banked water.

This is a long-term banking and exchange project that would extend through 2035. The RRBWSD Storage and Recovery Program would improve the reliability of CLWA's existing single or multiple dry-year supplies.

2.2.4 Water Acquisition from the Buena Vista Water Storage District and Rosedale-Rio Bravo Water Storage District Water Banking and Recovery Program

To further enhance water supply reliability by diversifying the supply, CLWA has worked with the Buena Vista Water Storage District (BVWSD) and RRBWSD to develop a water acquisition and water banking program. On October 26, 2006, CLWA certified the EIR for its Water Acquisition from the BVWSD and RRBWSD Water Banking and Recovery Program. CLWA is working on an agreement with the BVWSD and the RRBWSD for the rights to purchase 11,000 AF annually from BVWSD/RRBWSD during the term of CLWA's SWP Contract (2035) with an option to extend to a later date. This 11,000 AF of water acquired by CLWA would be used to meet current and future demand in its service area or the service area as it may be extended through annexation. An additional 9,000 AF would be available for purchase from year-to-year, depending on the hydrologic conditions and water availability. This additional water would only be available periodically, and while it would increase the water supply reliability for the CLWA service area, it would not support new development. The supplies associated with this project are planned for the future and are not part of CLWA's existing supply. The BVWSD/RRBWSD Water Acquisition project is expected to be operational in 2007.

On November 27, 2006, a complaint and petition for writ of mandate challenging the project approval was filed by California Water Impact Network (CWIN) in the Los Angeles County Superior Court (California Water Impact Network v. CLWA, Case No. BC 362523).

Generally, the petition challenges whether the EIR clearly identifies and describes the likely source of water for the project and also attacks the adequacy of the environmental review. CLWA has stated that it disagrees with the contentions made by CWIN in its petition and will vigorously defend the EIR in court. In any event, the EIR must be presumed to be legally adequate, unless it is established by a court of competent jurisdiction that the EIR is not supported by substantial evidence.

2.3 New Facilities

2.3.1 Treatment

CLWA filters and disinfects SWP water at its two treatment plants prior to its distribution to Local Purveyors. CLWA has recently constructed upgrades to the Earl Schmidt Water Filtration Plant and plans to expand of the Rio Vista Water Treatment Plant. The following section summarizes these actions.

The Earl Schmidt Water Filtration Plant (ESWFP) is one of two potable water treatment plants in the CLWA service area. The ESWFP is located near Castaic Junction, south of Lake Hughes Road and adjacent to Castaic Lake. It receives untreated SWP water from Castaic Lake and treats that water to meet applicable potable water quality standards.

CLWA evaluated designs and potential environmental impacts of the upgrade and expansion of the ESWFP in 2003. These process modifications were designed to achieve compliance with current and proposed water quality regulations (CLWA, 2003b). The capacity modifications to the ESWFP increased the firm treatment capacity of this facility to 56 mgd (CLWA, 2003b). These capacity modifications had the additional benefits of providing: (1) a greater degree of redundancy in treatment capabilities in the event of an emergency; (2) additional peak throughput capacity to meet existing summer peaking needs; and (3) capacity to serve future growth. The 56 mgd plant has been functioning with its new processing system and added capacity since the spring of 2005.

CLWA is also planning the expansion of the Rio Vista Water Treatment Plant (CLWA, 2006a). The plans call for the expansion of this facility from 30 mgd to 60 mgd and eventually to 90 mgd. These capacity modifications have the same benefits as described for the ESWFP, above. The CLWA Board of Directors approved the project and certified the Rio Vista Water Treatment Plant Expansion Final EIR on August 23, 2006.

Expansion of treatment capacity enhances the ability of regional water agencies to meet the peak demands of water users. Without these expansions water purveyors may be forced to increase the pumping capacity of groundwater wells to meet peak demands because of limited peaking capacity to treat imported water supplies. Treatment plant expansions do enhance the reliability of the delivery of water to users but do not add to the reliability of overall water supply in the Valley.

2.3.2 Conveyance

Completion and operation of the new facilities described below does not influence the amount of water available to support new development in the CLWA service area, but does support the delivery of the available water for use to existing and future development.

Facilities upgrades in the CLWA service area significantly contribute to meeting peak period daily demands and provide redundancy to cope with unanticipated outages and emergencies.

2.3.2.1 Pitchess Pipeline Extension

The Pitchess Pipeline Extension project is an approximately 4,300-foot-long, 24-inch lateral pipeline extension that extends the existing pipeline from just east of Interstate 5 to the intersection of the Old Road and Sedona Way. The Pitchess Pipeline carries treated imported water to the northwestern portion of CLWA's service area to supplement existing groundwater supplies distributed by the Local Purveyors. The Pitchess Pipeline was completed in fall of 2005.

2.3.2.2 Honby Pipeline

The Honby Pipeline Project is the construction of a 9,500-foot, 60-inch buried steel water pipeline to replace the existing 33-inch Honby pipeline, in a new alignment. Construction will occur in two stages. The first phase will include construction of a 2,500-foot pipeline segment that will connect the 84-inch treated water pipeline that leads from the RVWTP to the existing Honby Pipeline. The second phase will consist of the construction of the remaining 7,000-foot segment of the pipeline. This segment will continue from the end of the 2,500-foot segment to the new Sand Canyon pump station. Construction is expected to be complete by fall 2008. This pipeline will transport water that is already part of CLWA's supply.

2.3.2.3 Sand Canyon Pipeline

CLWA recently completed the construction of the Sand Canyon Pipeline and pump station, and the construction of a related storage reservoir is currently underway. Construction is expected to be completed by mid-2007. The 48-inch, approximately 30,000-foot-long water pipeline originates near the intersection of Furnivall Avenue and Santa Clara Street where the new Sand Canyon pump station is located. The pipeline travels southeast from the new pump station and terminates at the new storage reservoir being constructed west of Rolling Hills Avenue and Warmuth Road. The new pump station will provide the lift to transport water to the 7-million-gallon storage reservoir and ensure that adequate pressure is available throughout the project's service zone.

2.4 Plans and Reports

2.4.1 NCWD Water Supply Report

In late 2004, NCWD prepared an assessment of regional water supplies to assist the agency in determining if currently available and reasonably foreseeable water sources will be sufficient to meet existing and anticipated future water demands (NCWD, 2004). This assessment characterized the local and imported water supplies available to NCWD, the reliability of those water supplies and the projected water demands for the Santa Clarita Valley, and those within the NCWD service area. The assessment followed the guidelines in the California Water Code Sections 10910-10912 for approach, required information, and the

criteria for determining supply sufficiency to allow NCWD to facilitate the use of the information in the Water Supply Report in future.

NCWD evaluated various methods of predicting future water demands. The various methods included regional projections of per capita use estimates, extrapolation of historic water connections to new water connections, and econometric approaches using planned land use. The extrapolation of historic water connection method (with consideration of the results of the other methods) was used in the report.

It was determined that the total annual demand within the NCWD service area at build-out of the approved land use (at an indeterminate date) would be 29,150 AF. Water connections are expected to increase to 14,550 by 2025. Water demand in the NCWD service area (with anticipated conservation measures) is expected to increase to 17,400 AFY by 2025.

NCWD reviewed the status of each of the local and imported water supplies, their constraints, reliability, and augmentation possibilities. Based on those analyses sufficient water supplies appeared to be available to meet anticipated demand through 2025. This determination included normal, multiple dry, and single dry year conditions along with the use of local groundwater, imported, banked, and recycled supplies.

2.4.2 Santa Clarita Valley Water Reports

Water management agencies in the Santa Clarita Valley have prepared the annual *Santa Clarita Valley Water Report* (SCVWR) since 1998. This report provides the current information about water supplies (including the local groundwater resources, SWP water supplies, water conservation supplies and recycled water) and demands. The 2005 edition reviews the sufficiency and reliability of current supplies compared to existing demand and provides a short-term outlook of the supply-demand relationship for 2006.

The total water demand in the Santa Clarita Valley in 2005 was approximately 83,600 AF (SCVWP, 2006). Approximately 85 percent (70,800 AF) of this demand was delivered for municipal use and the remainder (12,800 AF) was for agricultural and other (miscellaneous) uses. As a result of the significantly wet conditions that prevailed through winter and spring, total demand in 2005 was approximately five percent lower than in 2004, and about nine percent lower than had been estimated in the previous SCVWR. The total water demands were met by a combination of about 45,100 AF from local groundwater resources, about 38,000 AF of SWP water, and about 450 AF of recycled water. Groundwater supplies were used to meet nearly 32,300 AF for municipal demand and 12,800 AF for agricultural and other uses. Groundwater supplies from the alluvial aquifer produced approximately 38,700 AF and slightly less than 6,500 AF were pumped from the underlying, deeper Saugus Formation. Alluvial aquifer pumping represented about a 5,000 AF increase from 2004 while pumping from the Saugus formation was essentially unchanged. Neither pumping volume resulted in any overall change in ongoing groundwater conditions (water levels, water quality, etc.) in either aquifer system. SWP deliveries to the Local Purveyors decreased by about 9,000 AF from the volume delivered in 2004.

Table 3 provides a summary of the water uses and supplies in the Santa Clarita Valley in 2005.

TABLE 3
Summary of 2005 Water Supplies and Uses (acre-feet)

Municipal		
State Water Project		38,034
Groundwater (Total)		32,316
Alluvial Aquifer	26,368	
Saugus Formation	5,948	
Recycled Water		438
Subtotal		**70,788**
Agriculture/Miscellaneous		
State Water Project		-
Groundwater (Total)		12,785
Alluvial Aquifer	12,280	
Saugus Formation	505	
Subtotal		12,785
Total		**83,573**

Source: SCVWP, 2006.

CLWA's final allocation of Table A from the SWP for 2005 was 90 percent, or 85,680 AF. Utilizing SWP contract provisions, CLWA elected to "carry over" unused remaining Table A Amount into 2006. The total available SWP supply in 2005 was 88,382 AF, including 2,702 AF of 2004 carryover delivered in early 2005. CLWA deliveries were 38,034 AF to the Purveyors and 20,000 AF to the RRBWSD Storage and Recovery Program (described in Section 2.2.3 above), with 31,377 AF of the 2005 Table A Amount for potential carryover to 2006. In 2005, CLWA did not need to supplement water supplies from the two groundwater banking agreements with Semitropic.

The SCVWR also provided a review of the status of the water resources available for use in the Santa Clarita Valley and applicable water management plans. Management plans for the Alluvial aquifer anticipate withdrawals in the range of 30,000 to 40,000 AFY in average/ normal years, and 30,000 to 35,000 AFY in dry years. Pumping from the Alluvial aquifer was 38,700 AF in 2005. Higher than average precipitation in late 2004 and 2005 resulted in significant water level recovery in the eastern part of the basin, continuing the overall trend of fluctuating groundwater levels within a generally constant range over the last 30 years. On a long-term basis, there is no evidence of any historic or recent trend toward permanent water level or storage decline.

These ongoing data indicate that the Alluvial aquifer remains in good operating condition and can continue to support pumping in the range described above without adverse results (e.g., long-term water level decline or degradation of groundwater quality). While there have been historical fluctuations in groundwater level and quality, typically associated with variations in precipitation and streamflow, there has been no long-term trend toward

groundwater quality degradation; groundwater produced from the Alluvial aquifer remains a viable municipal and agricultural water supply.

All other Alluvial wells operated by the Purveyors continue to be used for municipal water supply service; those wells near the Whittaker-Bermite property are routinely sampled and perchlorate has not been detected. The inactivation of Alluvial wells due to perchlorate contamination (described in Section 2.1.1.2 above) does not limit the Purveyors' ability to produce groundwater from the Alluvial aquifer in accordance with the groundwater operating plan.

Management plans for the Saugus Formation aquifer anticipate withdrawals in the range of 7,500 to 15,000 AFY in average/normal years and 21,000 to 35,000 AFY for one to three consecutive dry years. These management plans describe that such short-term pumping can be recharged during subsequent wet/normal years to allow groundwater levels and storage to recover, as it has in historical periods. Total pumping from the Saugus Formation was slightly less than 6,500 AF in 2005. On average, pumping from the Saugus Formation has been about 7,000 AFY since 1980. Both rates are near the lower end of the range of use of the water within the formation. As a result of long-term relatively low pumping from the Saugus Formation, groundwater levels in that aquifer have remained essentially constant over the last 35 to 40 years. Ammonium perchlorate contamination from the Whittaker-Bermite facility continued to force the closure of four wells in the Saugus Formation (described in Section 2.1.1.2 above). Despite the inactivated Saugus wells, the Purveyors still have sufficient pumping capacity in other wells to meet the planned normal range of Saugus pumping.

The 2005 SCVWR also provided up-to-date information on historical and current water deliveries by water source type. This information is provided in Table 4. The SCVWR identified that water demands and supplies fluctuate from year to year in response to climatic conditions. For example, while the long-term urbanization of the Santa Clarita Valley has resulted in a long-term increase in demand for urban uses, demand in 2005 was approximately five percent less than in 2004, principally as a result of a lengthy rainy season. Water supplies for 2006 were expected to be sufficient to meet the needs of the CLWA service and allow for the banking of an additional 20,000 AF in the RRBWSD Storage and Recovery Program.

2.4.3 2005 Urban Water Management Plan

Water management agencies in the Santa Clarita Valley prepared and approved an updated Urban Water Management Plan (UWMP) in 2005[3]. The approved UWMP provides a framework to guide long-term planning and management actions by the regional water

[3] The California Legislature enacted the Urban Water Management Planning Act in 1983. This act has been implemented through Water Code Sections 10610 - 10656. The Act states that every urban water supplier that provides water to 3,000 or more customers, or that provides over 3,000 acre-feet of water annually, should make every effort to ensure the appropriate level of reliability in its water service sufficient to meet the needs of its various categories of customers during normal, dry, and multiple dry years. The Act describes the contents of the Urban Water Management Plans as well as how urban water suppliers should adopt and implement the plans.

agencies. It also provides a broad perspective on a number of water supply issues to the public and provides information regarding:

- The potential sources of supply and their reasonable probable yield
- The probable demand, given a reasonable set of assumptions about regional growth and implementation of good water management practices
- An assessment of how the supply will be able to meet demand in the next 20 years

The UWMP contains a description of the historic and current water use and a description of the methodology used to project future demands within CLWA's service area. Water use was divided into applicable land use categories (residential, industrial, institutional, landscape, agricultural, and other). Existing land use data and approved new water connection information were compiled from each of the Local Purveyors. Future projections of demand were based on information in the "One Valley One Vision" report, a joint planning effort by the City of Santa Clarita and the County of Los Angeles. This information was then compared to historical trends for new water service connections and customer use factors considering climatic and water conservation effects. Historic water demands are shown in Figure 5, and projected future water demands are provided in Table 5.

TABLE 4
Municipal Water Supply Utilization by the Local Purveyors

Year	State Water Project	Alluvial Aquifer	Saugus Formation	Recycled Water	Total Municipal
1980	1,125	16,625	4,569	0	22,319
1981	5,816	14,056	4,950	0	24,822
1982	9,659	8,684	3,569	0	21,912
1983	9,185	8,803	3,398	0	21,386
1984	10,996	12,581	3,809	0	27,386
1985	11,823	12,519	4,140	0	28,482
1986	13,759	12,418	4,975	0	31,152
1987	16,285	12,630	4,962	0	33,877
1988	19,033	12,197	6,404	0	37,634
1989	21,618	13,978	7,217	0	42,813
1990	21,613	13,151	8,302	0	43,066
1991	7,968	17,408	14,417	0	39,793
1992	13,911	16,897	10,458	0	41,266
1993	13,393	19,808	10,151	0	43,352
1994	14,389	20,068	11,531	0	45,988
1995	16,996	20,590	8,087	0	45,673
1996	18,093	24,681	7,373	0	50,147
1997	22,148	25,273	6,752	0	54,173
1998	20,254	23,898	4,706	0	48,858
1999	27,282	27,240	2,728	0	57,250
2000	32,579	25,216	3,193	0	60,988
2001	35,369	22,055	3,267	0	60,691
2002	41,768	22,097	4,360	0	68,225
2003	44,419	19,397	3,581	700	68,097
2004	47,205	18,970	5,701	448	72,324
2005	38,034	26,368	5,948	438	70,788

Source: SCVWP, 2006.

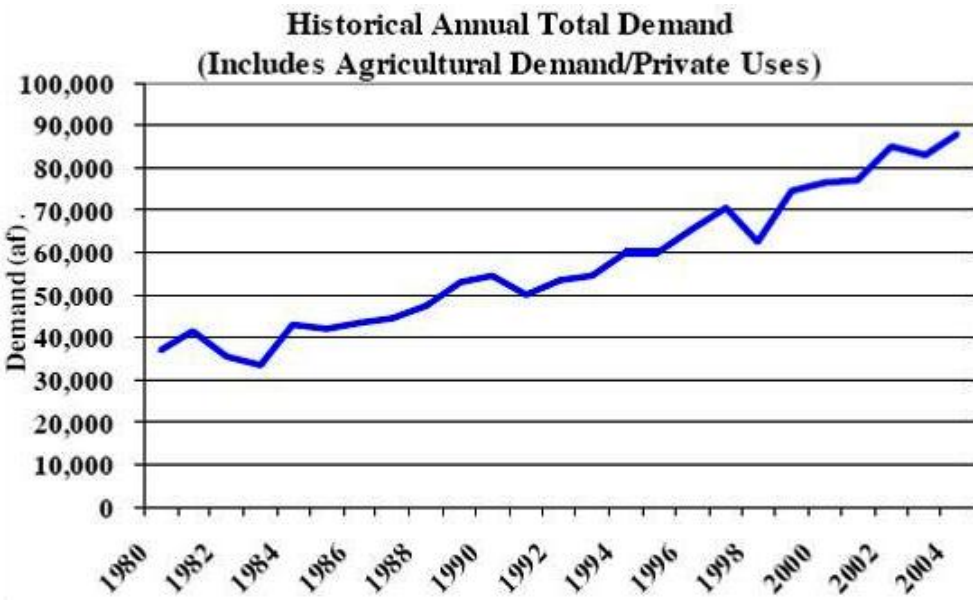

FIGURE 5
Historical Annual Total Demand in the CLWA Service Area
Source: CLWA, 2005a

TABLE 5
Projected Water Demands in the CLWA Service Area

Purveyor	Demand (AF)						Annual Increase
	2005	2010	2015	2020	2025	2030	
CLWA's SCWD	30,400	35,000	39,100	43,100	47,100	51,100	2.1%
LACWWD No. 36	1,300	1,600	1,800	2,000	2,000	2,800	3.1%
NCWD	11,800	14,400	16,000	17,700	19,300	21,000	2.4%
VWC	30,200	35,100	40,200	43,700	50,600	54,400	2.4%
Total Purveyor	**73,700**	**86,100**	**97,100**	**106,500**	**119,400**	**129,300**	**2.2%**
Agricultural / Private Uses	15,600	13,950	12,300	10,650	9,000	9,000	--
Total (w/o conservation)	**89,300**	**100,050**	**109,400**	**117,150**	**128,400**	**138,300**	**--**
Conservation[a]	(7,370)	(8,610)	(9,710)	(10,650)	(11,940)	(12,930)	--
Total w/conservation	**81,930**	**91,440**	**99,690**	**106,500**	**116,460**	**125,370**	**1.3%**

Source: CLWA, 2005a.

[a]Assumes 10 percent reduction on urban portion of demand resulting from conservation best management practices.

The 2005 UWMP also contains a description of existing and reasonably anticipated water resources available to CLWA and the Local Purveyors. These descriptions include the various sources of water, the amount of water that would be expected to be available under normal years and during periods of single year and multiple year droughts.

Table 6 provides an updated characterization of the existing and anticipated water supplies for use within the CLWA service area, and the associated assumptions and caveats, drawn primarily from the 2005 UWMP. The updates reflect the progress on supplies listed as "planned" in the 2005 UWMP that have been completed and implemented. Specifically, the Rosedale-Rio Bravo project was "planned" at the time of the completion of the 2005 UWMP, however, CLWA has since completed its evaluation and has signed an agreement to implement this project. CLWA banked 20,000 AF in 2005 and planned to bank 20,000 AF in 2006. Therefore, the project is included in the Existing Banking Programs portion of Table 6 rather than in the Planned Banking Programs as shown in the 2005 UWMP. The CEQA analysis of the Buena Vista/Rosedale-Rio Bravo project has been completed but the agreement to implement that project is still pending. Therefore, the Buena Vista/Rosedale-Rio Bravo project is still considered "planned." Also, the 2005 UWMP identified the then known water demands associated with proposed annexations related to the Buena Vista/Rosedale-Rio Bravo project, however, due to the passage of time, those demands may vary.

Reliability planning and the inherent nature of the delivery reliability of each of the water sources were reviewed in the 2005 UWMP. This discussion included:

- Characteristics of the local groundwater supplies from the alluvial and Saugus Formation aquifers
- The timing and availability of recycled water
- Supplies from the SWP, provisions of the water supply contract and the anticipated delivery reliability of those supplementary supplies (as described in the 2005 SWP Delivery Reliability Report [DWR 2006b])
- Various flexible water supply arrangements (e.g.; the flexible storage account with DWR, water banking agreements with Semitropic Water Storage District and the Rosedale-Rio Bravo Water Storage District, and the evaluation of a water supply agreement with the BVWSD and the RRBWSD) established by CLWA to meet water demands in years when local and SWP supplies were insufficient to meet water user demands

Also included in the 2005 UWMP are descriptions of water Demand Management Measures and the Best Management Practices implemented by CLWA as a part of water conservation programs to result in quantifiable water savings for the Valley, and a Water Shortage Contingency Plan and a Drought Emergency Water Sharing Agreement have been prepared by CLWA and the Local Purveyors.

The UWMP was the subject of a series of public outreach actions, including two public hearings. It was adopted by the water management agencies in the Santa Clarita Valley in late 2005.

TABLE 6
Existing and Planned Water Supplies in the CLWA Service Area

Water Supply Sources	Supply (AF)					
	2005	2010	2015	2020	2025	2030
Existing Supplies						
Imported (Wholesale)	**70,380**	**73,660**	**75,560**	**76,080**	**77,980**	**77,980**
SWP Table A Supply [2]	65,700	67,600	69,500	71,400	73,300	73,300
Flexible Storage Account (CLWA) [3]	4,680	4,680	4,680	4,680	4,680	4,680
Flexible Storage Account (Vent. Cty) [3,4]	0	1,380	1,380	0	0	0
Local Supplies						
Groundwater	40,000	46,000	46,000	46,000	46,000	46,000
Alluvial Aquifer	35,000	35,000	35,000	35,000	35,000	35,000
Saugus Formation	5,000	11,000	11,000	11,000	11,000	11,000
Recycled Water	1,700	1,700	1,700	1,700	1,700	1,700
Total Existing Supply	**112,080**	**121,360**	**123,260**	**123,780**	**125,680**	**125,680**
Existing Banking Programs[3]						
Semitropic Water Bank[5]	50,870	50,870	0	0	0	0
Rosedale-Rio Bravo	0	20,000	20,000	20,000	20,000	20,000
Total Existing Banking Programs	**50,870**	**70,870**	**20,000**	**20,000**	**20,000**	**20,000**
Planned Supplies						
Local Supplies						
Groundwater	0	10,000	10,000	20,000	20,000	20,000
Restored wells (Saugus Formation)	0	10,000	10,000	10,000	10,000	10,000
New Wells (Saugus Formation)	0	0	0	10,000	10,000	10,000
Recycled Water[6]	0	0	1,600	6,300	11,000	15,700
Transfers						
Buena Vista/Rosedale-Rio Bravo[7]	0	11,000	11,000	11,000	11,000	11,000
Total Planned Supplies	**0**	**21,000**	**22,600**	**37,300**	**42,000**	**46,700**
Planned Banking Programs[3]						
Additional Planned Banking	0	0	20,000	20,000	20,000	20,000
Total Planned Banking Programs	**0**	**0**	**20,000**	**20,000**	**20,000**	**20,000**

Source: CLWA, 2005a. CLWA, 2005b.

1. The values shown under "Existing Supplies" and "Planned Supplies" are supplies projected to be available in average/normal years. The values shown under "Exiting Banking Programs" and "Planned Banking Programs" are either total amounts currently in storage, or the maximum capacity of program withdrawals.
2. SWP supplies are calculated by multiplying CLWA's Table A Amount of 95,200 AF by percentages of average deliveries projected to be available, then from Table 6-5 of DWR's "Excerpts from Working Draft of 2005 SWP Delivery Reliability Report" (May 2005).
3. Supplies shown are total amounts that can be withdrawn and would typically be used only during dry years.
4. Initial term of the Ventura County entities' flexible storage account is ten years (from 2006 to 2013).
5. Supplies shown are the total amount currently in storage and would typically be used only during dry years. Once the current storage amount is withdrawn, this supply would no longer be available, and this supply is not available after 2013.
6. Recycled water supplies based on projections provided in Chapter 4, Recycled Water of the 2005 UWMP.
7. CLWA is in the process of acquiring this supply, primarily to meet the demands of future annexations to the CLWA service area. This acquisition is consistent with CLWA's annexation policy under which it will not approve potential annexations unless additional water supplies are acquired. Unless and until any such annexations are actually approved, this supply will be available to meet demands within the existing CLWA service area. Since the 2005 UWMP was completed, the BVRRB project EIR has been certified and has been legally challenged. CLWA is in the process of completing agreements for the transfer. It is also noted that since the completion of the 2005 UWMP, the information presented therein with regard to water demand for the then known proposed annexations may vary.

In February 2006, the California Water Impact Network and Friends of the Santa Clara River (petitioners) filed another lawsuit, challenging the adequacy of the 2005 UWMP on multiple grounds. The main arguments presented in this suit are that the UWMP allegedly overstates the reliability of both groundwater and surface water supplies, fails to provide an adequate discussion of perchlorate contamination, fails to adequately address the reliability of the 41,000 AFY transfer, relies on a flawed model for predicting SWP deliveries, fails to address the effect of global warming and regulatory water quality controls on water deliveries from the SWP, and fails to identify the impact of private wells on the Santa Clarita River watershed. These challenges were transferred to the Los Angeles Superior Court and the litigation is pending (Los Angeles County Superior Court Case BS 103295).

Concerned water agencies have acknowledged that a challenge to the adequacy of the 2005 UWMP has been filed but have concluded that it may assume that the recently adopted UWMP is legally adequate, unless and until it is set aside by a court of competent jurisdiction. Such and action by the court has not occurred. Moreover, the allegations of legal inadequacy made by petitioners were raised in the multiple hearings during the review of the 2005 UWMP prior to its adoption. CLWA responded to, and rejected, these allegations of inadequacy.

2.4.4 Monterey Agreement and the SWP Reliability Report

During the 1990s, disagreements arose between DWR and the agencies that hold contracts for SWP water (SWP contractors) about how available SWP supplies should be allocated. The SWP contractors and DWR agreed to negotiate a settlement of their differences and develop a new approach to managing SWP resources through a major overhaul of the Water Supply Contracts. After a series of exhaustive negotiating sessions, an agreement was reached in December 1994 in Monterey, California on a set of principles, known as the "Monterey Agreement." The Monterey Agreement principles were implemented through an amendment to the Water Supply Contracts between DWR and the SWP contractors, which became known as the "Monterey Amendment." The Monterey Amendment was approved in 1995 and went into effect in August 1996.

A Program EIR analyzing the environmental impacts of the Monterey Amendment (Monterey Agreement EIR) was prepared and certified by CCWA in 1995.

As discussed in Section 2.2.2 of this Appendix, in late 1995, a lawsuit was filed by the Planning and Conservation League (PCL), Plumas County Water Conservation and Flood Control District (Plumas County), and Citizens Planning Association of Santa Barbara County (collectively referred to as the "plaintiffs") challenging the EIR. The plaintiffs argued that the environmental impact analysis prepared was inadequate because CCWA was not a proper lead agency and the EIR analysis did not reflect the inability of the SWP to deliver full Contract amounts to SWP contractors, even though they held contractual "entitlements" to those supplies. In 2000, the California State Court of Appeal, Third Appellate District (in *Planning and Conservation League v. Department of Water Resources,* (2003) 83 Cal.App. 4th 892) decertified an EIR prepared by the Central Coast Water Agency (CCWA) to address the "Monterey Agreement" and found that a new EIR must be prepared.

Discussions to mediate a settlement began in 2001 and were finalized in May 2003. All parties to the litigation have signed the settlement agreement. The settlement agreement calls for DWR to prepare a new EIR pursuant to CEQA, while the Monterey Amendment's provisions remain in operation. Pursuant to the settlement agreement, the parties are preparing a new EIR. The new EIR will evaluate the potential environmental impacts of changes to SWP operations incorporated in the Monterey Amendment and the settlement agreement. The settlement agreement did not change the substance of the Monterey Amendment, but addressed the process by which the new Monterey Amendment EIR will be prepared. The settlement agreement also calls for DWR to produce a biennial SWP Delivery Reliability Report.

DWR issued the SWP Delivery Reliability Report 2005 (DWR, 2006b) to update information presented in the similar 2002 report (DWR, 2003). A draft of the SWP Delivery Reliability Report 2005 underwent extensive public review in late-2005. The information contained in the 2005 report was recommended by DWR for use by SWP contractors in developing their 2005 Urban Water Management Plans.

The SWP Delivery Reliability Report 2005 presented DWR's current information regarding the annual water delivery reliability of the SWP for existing and future levels of development in the water source areas, assuming historical patterns of precipitation. This report reviewed the general subject of water delivery reliability and discussed how DWR determines delivery reliability for the SWP. A discussion of the analysis tool (the CalSim II computer simulation model), the analyses, and peer review regarding the accuracy of CalSim II and its suitability for use in this report was included[4]. Finally, estimates of SWP delivery reliability today and in the future are provided along with examples of how to incorporate this information into local water management plans.

The SWP Delivery Reliability Report 2005 did not include analyses of how specific water agencies should integrate SWP water supply into their water supply equation. The reports identified that such integration requires extensive information about local facilities, local water resources, and local water use, which is beyond the scope of the State-wide report. Moreover, such an analysis would require decisions about water supply and use that traditionally have been made at the local level. DWR identified that local officials (like CLWA) should continue to fill this role. Chapter 6 of the 2005 Report provided examples to help local agencies incorporate the information presented in this report into local water management assessments.

The 2005 Report (DWR, 2006b) provided information on five CalSim II model studies. Studies 1, 2, and 3 were from the 2002 SWP Delivery Reliability Report while studies 4 and 5 were developed specifically for the 2005 Report. The results of studies 1, 2 and 3 were included for comparison purposes.

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[4] The critical data in the 2002 and 2005 Reports are based upon water delivery predictions using a computer simulation model, CalSim II. Public criticism of this analytical approach centers on two areas: (1) the ability of CalSim II to simulate "real world" conditions and accurately estimate SWP deliveries; and (2) the inability of the approach to account for future uncertainties such as changes in the climate pattern or levee failure in the Sacramento-San Joaquin Delta due to flooding or an earthquake. While no model is perfect, DWR is satisfied with the degree to which CalSim II simulates actual, real-world operations of the SWP. When professional judgment is used with the knowledge of the limitations of CalSim II and the assumptions used in the studies, CalSim II is a useful tool in assessing the delivery reliability of the SWP. The studies and peer review related to CalSim II are discussed in Chapter 3 and Appendix E of the 2005 Report.

The results of these studies as summarized in Table 7 for average, maximum, and minimum deliveries for SWP contractors south of the Sacramento-San Joaquin Delta.

TABLE 7
Table A Deliveries for SWP Contractors South of the Delta

Study	Average Delivery		Maximum Delivery		Minimum Delivery	
	Thousand AFY	Percent of Maximum Table A	Thousand AFY	Percent of Maximum Table A	Thousand AFY	Percent of Maximum Table A
2002 SWP Delivery Reliability Report						
1. 2001 Study	2,962	72%	3,845	93%	804	19%
2. 2021A Study	3,083	75%	4,128	100%	830	20%
3. 2021B Study	3,130	76%	4,133	100%	830	20%
2005 SWP Delivery Reliability Report (Updated Studies)						
4. 2005 Study	2,818	68%	3,848	93%	159	4%
5. 2025 Study	3,178	77%	4,133	100%	187	5%

Source: DWR 2006b.

Note: Maximum Delta Table A is 4.133 million acre-feet per year.

The results of these studies for a variety of dry-year scenarios are provided in Table 8. Information is provided for both current (Line 4) and for 20 years in the future (Line 5).

TABLE 8
Average and Dry-year Table A Delivery from the Delta

	Average 1922-1994	Single dry-year (1977)	2-year drought (1976-1977)	4-year drought (1931-1934)	6-year drought (1987-1992)	6-year drought (1929-1934)
2002 SWP Delivery Reliability Report						
1. 2001 Study	72%	19%	48%	37%	41%	40%
2. 2021 A Study	75%	20%	44%	39%	40%	41%
3. 2021B Study	76%	20%	44%	39%	40%	41%
2005 SWP Delivery Reliability Report (Updated Studies)						
4. 2005 Study	68%	4%	41%	32%	42%	37%
5. 2025 Study	77%	5%	40%	33%	42%	38%

Source: DWR, 2006b.

The anticipated average delivery of SWP forecast in the SWP Water Delivery Reliability Report (DWR, 2006b) are similar to those found in the prior DWR report (DWR, 2003). Anticipated delivery in a single-year drought scenario is significantly less than those previously published. These results tend to demonstrate the need for water banking programs such as those implemented by CLWA (e.g., Semitropic and RRBWSD) to reduce

or eliminate the effects of anticipated reduced delivery amounts in single dry years and more extended drought periods. The results of the SWP Water Delivery Reliability Report (DWR, 2006b) were incorporated into the 2005 Urban Water Management Plan (CLWA, 2005a).

2.4.5 Global Warming

The potential effects of increasing atmospheric concentrations of carbon dioxide and other 'greenhouse gases' and the observed increase in the average temperature of the Earth's atmosphere and oceans have been the subject of considerable technical analysis and political debate. The natural phenomena (e.g.; temperature, rainfall) that together form the climate of a particular region vary from day-to-day and year-to-year. The variation in climate can be a result of natural, internal processes or in response to external forces from both human and non-human causes, including solar activity, volcanic emissions, and greenhouse gases. There is little controversy that the earth's atmosphere has warmed over the last century. The detailed causes of this change remain an active field of research. However, there is increasing amount of scientific evidence that identifies greenhouse gases as the primary cause of the recent warming. This conclusion can be controversial, especially outside the scientific community. The U.S. Environmental Protection Agency maintains a website summarizing the most recent scientific evaluations and current news on the global warming issue at: http://yosemite.epa.gov/oar/globalwarming.nsf/content/index.html.

On June 1, 2005, Governor Arnold Schwarzenegger issued Executive Order S-3-05 establishing greenhouse gas emissions targets for California and requiring biennial reports on potential climate change effects on several areas, including water resources. In June 2006 DWR published a Technical Memorandum Report entitled Progress on Incorporating Climate Change into Planning and Management of California's Water Resources in response to the Executive Order (DWR, 2006a).

The Technical Memorandum Report describes progress made incorporating climate change into existing water resources planning and management tools and methodologies. Some preliminary results on the potential effects of climate change are presented. While the analyses presented in that report used many of the most current scientific techniques and were reviewed by experts, all of the results are preliminary. They incorporate several assumptions, reflect a limited number of climate change scenarios, and do not address the likelihood of each scenario. Policy implications of climate change and recommendations to respond to the future demands for water are identified as beyond the scope of the report.

The Report covers a wide range of topics addressing climate change and its potential impact on California's water resources. These include the following:

- Causes of climate change and potential threat to California's water resources, and measures that could be taken to adapt to or mitigate the effects of climate change.
- Background and approach used for the climate change analyses included and the climate change scenarios used in the Report.
- Potential impacts of the selected climate change scenarios on SWP and Central Valley Project operations. Results presented include changes in reservoir inflows, delivery reliability, and annual average carryover storage. It also discusses the interaction of

various regulatory and operational conflicts such as water allocations, flood control, in-stream flow requirements, and water quality requirements. The Report also presents the implications for possible changes to operations that could mitigate the effects of climate change however, these operational changes are left for future work.

- Potential impacts to Delta water quality and water levels, including effects of modified Delta inflows and exports on compliance with water quality standards and the implications of sea level rise.
- Implications of global warming for managing floods.
- Potential increases in crop water use due to global warming, and application of analysis tools to assess changes in estimated net irrigation requirements for crops.

In addition, the Report included directions for further work to incorporate climate change into California's water resources management. This includes probability estimates of potential climate change scenarios in order to provide policymakers with both ranges of impacts and the likelihoods associated with those impacts.

Based on the information provided in the Report, Table 9 provides a summary of the anticipated future effects of global climate change on California's water resources and the consequences of those effects.

TABLE 9
Potential Effects of Climate Change on California's Water Resources and Expected Consequences

Potential Water Resource Impact	Expected Consequence
Reduction of the State's Average Annual Snowpack	Potential loss of 5 million acre-feet or more of average annual water storage in the State's snowpack
	Increased challenges for reservoir management and balancing the competing concerns of flood protection and water supply
Changes in the Timing, Intensity, Location, Amount, and Variability of Precipitation	Potential increased storm intensity and increased potential for flooding
	Possible increased potential for droughts
Long-term Changes in Watershed Vegetation and Increased Incidence of Wildfires	Changes in the intensity and timing of runoff
	Possible increased incidence of flooding and increased sedimentation
Sea Level Rise	Inundation of coastal marshes and estuaries
	Increased salinity intrusion into the Sacramento-San Joaquin River Delta
	Increased potential for Delta levee failure
	Increased potential for salinity intrusion into coastal aquifers (groundwater)
	Increased potential for flooding near the mouths of rivers due to backwater effects
Increased Water Temperatures	Possible critical effects on listed and endangered aquatic species
	Increased environmental water demand for temperature control
	Possible increased problems with foreign invasive species in aquatic ecosystems
	Potential adverse changes in water quality, including the reduction of dissolved oxygen levels
Changes in Urban and Agricultural Water Demand	Changes in demand patterns and evapotranspiration rates

Source: DWR, 2006a.

Other recent DWR documents have addressed the potential for climate change, the potential effects on water resources management, and the applicability of existing models to simulate current and future conditions that would be likely to occur over the next 20-years. Other evaluations (see http://www.climatechange.ca.gov/biennial_reports/2006report/) have used readily available models and other water management tools to assess the affects of various global climate change scenarios on water supplies in California. DWR addressed the need to consider global climate change as part of long-term planning for the management of California's water resources in the Bulletin 160: California Water Plan Update – 2005. This report acknowledged that:

> *California's future hydrologic conditions will likely be different from patterns observed over the past century. Predictions include increased temperatures, reductions to the Sierra snowpack, earlier snowmelt, and a rise in sea level, although the extent and timing of the changes remain uncertain. …*
>
> *Managing water resources with climate change could prove different than managing for historical climate variability because climate change could produce hydrologic conditions, variability, and extremes that are different from what current water systems were designed to manage; …*
>
> *At present, the extent of climate change impacts is uncertain. As more sophisticated tools are developed and more studies are completed, better quantification may be possible. … Incorporating flexibility and adaptability into our current system can strengthen our ability to respond to change. Flexible systems contribute to beneficial operations both under current as well as future climate conditions by allowing management adjustments or midcourse corrections without causing major economic and social disruptions…. (DWR 2005)*

The SWP Delivery Reliability Report addressed the need to incorporate some of the uncertainties of global warming with regard to planning and operation of the SWP, as described in the following excerpt from the Report:

> *Until the impacts of climate change on precipitation and runoff patterns in California are better quantified, future weather patterns are usually assumed to be similar to those in the past, especially where there is a significant historical rainfall record.*
>
> *The State Water Project analyses contained in this report are based upon 73 years of historical records (1922-1994) for rainfall and runoff that have been adjusted to reflect the current and future levels of development in the source areas by analyzing land use patterns and projecting future land and water use. These series of data are then used to forecast the amount of water available to the SWP under current and future conditions.*
>
> *The assumption that past rainfall-runoff patterns will be repeated in the future has an inherent uncertainty, especially given the evolving information on the potential effects of global climate change. (DWR 2006a)*

The California Assembly and Senate recently passed Assembly Bill 32, the California Global Warming Solutions Act of 2006. This act requires the State Air Resources Board to adopt a

statewide greenhouse gas emissions limit equivalent to the statewide greenhouse gas emissions levels in 1990 and establish a mechanism to achieve this limit by 2020. The bill also requires the Board to adopt regulations for reporting and verifying statewide greenhouse gas emissions and to monitor and enforce compliance with the greenhouse gas emissions program. The Governor signed Assembly Bill 32 on September 27, 2006.

2.5 Sacramento-San Joaquin Delta Limitations

As with water management planning in the Santa Clarita valley, a variety of water management plans and actions have occurred or are planned for the Sacramento-San Joaquin Delta. These actions range from changes in water management infrastructure to changes in water quality requirements to protect the biological resources in the Delta. A description of some of the more substantial changes in the Delta region is provided below:

- **CALFED Litigation—** The CALFED Bay Delta Program is an association of agencies and stakeholders whose goal is to develop and implement a long-term plan to address chronic water supply and environmental problems in the Sacramento-San Joaquin River Delta and San Francisco Bay. This association has developed a Program Action Plan that provides a framework for the implementation of projects within the CALFED Program. The major program components are ecosystem restoration; water supply reliability (including water use efficiency, water transfers, watershed management, water storage, and water conveyance); water quality; and levee system integrity. An Environmental Impact Statement/EIR was prepared for the CALFED Program in 1999 and was certified in August 2000. Three separate cases concerning the CALFED process were originally filed in Superior Court in Sacramento, Fresno, and Orange counties, and the cases were coordinated for trial proceedings before the Superior Court, Sacramento County. In April 2003, a Sacramento Superior Court upheld the EIR and its certification under CEQA. However, this judgment was reversed, in part, by the Third Appellate Court of California. The components of the CALFED Program continue to be implemented.

- **Environmental Water Account—** The Environmental Water Account (EWA) is a cooperative water management program designed to provide protection to at-risk native fish species of the Delta estuary while improving water supply reliability for water users. The EWA program makes environmentally beneficial changes in the operations of the SWP and the Central Valley Project (at no uncompensated water loss to the Central Valley Project and SWP water users). The protective actions for at-risk native fish species proposed as part of the EWA would range from reducing Delta export pumping to augmenting instream flows and Delta outflows. Beneficial changes in SWP and Central Valley Project operations could include changing the timing of some flow releases from storage and the timing of water exports from the Delta pumping plants to coincide with periods of greater or lesser vulnerability of various fish species to environmental conditions in the Delta. DWR and the U.S. Bureau of Reclamation released the Final Environmental Impact Statement (EIS)/EIR for the EWA in January 2004.

- **South Delta Improvements Program—** The South Delta Improvements Program (SDIP) was included in the CALFED Program. The SDIP consists of two major components: (1) physical and structural improvements in the south Delta; and (2) operational improvements at the SWP's Clifton Court Forebay. The physical and structural

improvements consists of the following: (1) construction and operation of permanent operable gates at up to four locations in the south Delta channels to protect fish and meet the water level and, through improved circulation, water quality needs for local irrigation diversions; (2) channel dredging to improve water conveyance; and (3) modification of 24 local agricultural diversions. The operational components consider raising the permitted diversion limit into the SWP Clifton Court Forebay from 6,680 cubic feet per second (cfs) to 8,500 cfs. DWR and the U.S. Bureau of Reclamation released a Draft Environmental Impact Statement/EIR for the SDIP in October 2005.

- **North Delta Flood Control and Ecosystem Restoration Project—**The channel system in several of the streams in the North Delta lacks capacity to convey flows from the upstream watershed through the Delta to the San Joaquin River and to the San Francisco Bay. In concert with the CALFED Program, the North Delta Flood Control and Ecosystem Restoration Project, also referred to as the North Delta Improvements Project (NDIP), is designed to implement flood control improvements in a manner that also contributes to ecosystem restoration, water quality, and water supply reliability concerns in the North Delta. The NDIP will improve water conveyance, improve water supply reliability, facilitate reductions in salinity, recommend ecosystem restoration actions, and improve levee stability and integrity while minimizing impacts to agricultural and recreation resources. DWR and U.S. Army Corps of Engineers published a Notice of Intent/Notice of Preparation for the EIS/EIR on this project in January 2003.

- **Delta Levee Improvements—**There are over 1,600 miles of aging levees in the Delta. The integrity of these levees has been of concern for some time and was brought to the forefront after the failure of the Delta's Jones Tract levee in 2004, and subsequent levee failures and flooding due to hurricane Katrina in New Orleans in 2005. There are a variety of on-going and planned activities related to improving the integrity of the levees in the Delta.

- **Other SWP and/or Central Valley Project Operations Projects—**There are a variety of on-going and planned projects related to the operations of the SWP and Central Valley Project. These include, but are not limited to the following: 2004 Long-Term Central Valley Project Operations Criteria and Plan; San Luis Reservoir Low-Point Study; and the Delta-Mendota Canal/California Aqueduct Intertie.

- **Endangered Species Considerations—**Several species with special protected status that occur in the Delta, such as the Delta smelt, have experienced significant declines in their abundance. A variety of actions, projects, and plans have been implemented or are in the planning stages to address these species issues. These actions are being undertaken by a variety of federal, state, and local agencies. Several federal, state and local agencies, including the U.S. Bureau of Reclamation, U.S. Fish and Wildlife Service, the National Oceanic and Atmosphere Administration-Fisheries, DWR, certain water management wholesale and retail agencies, have initiated new species conservation planning and permitting activities for anticipated and ongoing water management operations in the Delta.

While the above projects and actions provide an example of the current and anticipated future actions in the Delta region, they do not directly affect the water supply, quality, and

reliability for the Santa Clarita Valley. However, they have a direct and/or indirect effect on the overall SWP water supply.

The 2005 SWP Delivery Reliability Report and the modeling analysis conducted for that report took into account the effects of many of these changes on water supply, quality, and supply reliability for SWP contractors south of the Delta. It is anticipated that future SWP Delivery Reliability Reports will take into account the effects of additional projects and programs as they are implemented.

2.6 Santa Clarita River TMDLs

As a result of long-term water quality concerns, two Total Maximum Daily Loads (TMDL) [5] were required and completed for chlorides and nitrogen on the Santa Clara River. These TMDLs are described below.

2.6.1 Chlorides

In recent years, elevated concentrations of chloride have been measured in waters of the Santa Clara River watershed. These concentrations are primarily due to various types of loading during beneficial water uses, including agricultural uses (irrigation and leaching); commercial uses; domestic uses; and water treatment (e.g., water softeners) (LACSD, 2002). In addition to loading from urban runoff, imported water in certain year types, and the discharge of treated wastewater, naturally occurring chloride concentrations contribute to excessive chloride concentrations in Santa Clarita Valley groundwater (LARWQCB, 1999b). The identification of excessive chloride concentrations resulted in the addition of several reaches of the Santa Clara River to the Section 303(d) List.

Table 10 provides a timeline summary of the regulatory actions taken to regulate chloride loading within the Santa Clara River.

The revisions to the chloride TMDL adopted in May 2004 required completion of several special studies to characterize the sources, fate, transport, and specific impacts of chloride in the Upper Santa Clara River. The first of these special studies, the Literature Review Evaluation, was completed in September 2005 (Upper Santa Clara River Agricultural Technical Working Group, 2005).

In addition, the LACSD has compiled the Santa Clarita Valley Joint Sewerage System Chloride Source Report, a detailed and comprehensive study of the sources of chloride loading in the Santa Clarita Valley (LACSD, 2002). That study identified that residential water use, primarily from self-regenerating water softeners, greatly contributes to the chloride loading.

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[5] The federal Clean Water Act requires states to designate appropriate water uses to be protected and directs states to set water quality criteria based on these uses (United States Environmental Protection Agency [USEPA] 2000). Under section 303(d) of the Clean Water Act, states, territories, and authorized Indian tribes are required to submit lists to the USEPA detailing water bodies for which existing pollution controls are insufficient to attain or maintain water quality standards. After submitting the list of "impaired waters" to the USEPA, states must develop a TMDL plan to limit excess pollution. A TMDL is a number that represents the assimilative capacity of water for a particular pollutant, or the amount of a particular pollutant that the waterbody can receive without impacting its beneficial uses. TMDL plan implementation can be accomplished through revised permit requirements (for point source contaminants) and through implementation of Best Management Practices (USEPA 1999).

TABLE 10
Regulatory Timeline for Chloride

Time	Action
January 1997	LARWQCB adopts a Chloride Policy, which consists of Resolution No. 97-02: Amendment to the California Regional Water Quality Control Plan for the Los Angeles Region, to Incorporate a Policy for Addressing Levels of Chloride in Discharges of Wastewaters.
Fiscal Year 1997/1998	Santa Clara River Reaches 3, 7 and 8 are added to the Section 303(d) List for chloride impairment, and TMDL monitoring commences.
October 2002	LARWQCB amended the 1994 Basin Plan to incorporate a TMDL for chloride for the upper Santa Clara River, establishing the 100 mg/L surface water quality objective for Reaches 7 and 8.
February 2003	The California State Water Resources Control Board (SWRCB) remanded the chloride TMDL back to the LARWQCB to consider sequentially phasing TMDL implementation tasks, extending the interim limits, and reevaluation of the chloride objective itself.
March 2003	LACSD adopts an ordinance that prohibits the installation and use of new self-regenerating water softeners in the Santa Clarita Valley to help lessen the chloride loading in the region.
May 2003	The U.S. Environmental Protection Agency (USEPA) is developing chloride TMDLs for Reaches 3, 7, and 8 of the Santa Clara River, in the event that the LARWQCB does not adopt its chloride TMDL by June 2003.
July 2003	The LARWQCB adopted the chloride TMDL in light of the Remand Resolution, and revised the Basin Plan to incorporate the chloride TMDL.
May 2004	The LARWQCB revised and adopted the chloride TMDL. Revisions included incorporation of four major studies into the Implementation Plan, including an evaluation of the appropriate chloride threshold for the reasonable protection of salt-sensitive agriculture.
Late 2004	The SWRCB and the Office of Administrative Law approve the chloride TMDL.
April 2005	The USEPA approved the chloride TMDL.
August 2006	The LARWQCB adopted revisions to the TMDL. The revisions include acceleration of the final TMDL completion date and incorporation of time-certain tasks related to the design and treatment facilities into the Implementation Plan.

Source: LARWQCB 2006a and 2006b, SWRCB 2003 and 2002, LACSD 2002, USEPA 2003.

mg/L = milligrams per liter

Based on the results of that study, the LACSD adopted an ordinance that prohibits the installation and use of new self-regenerating water softeners in the Santa Clarita Valley. This ordinance took effect in March 2003.

LACSD has also led the completion of a collaborative report entitled "Chloride Source Identification/Reduction, Pollution Prevention, and Public Outreach Plan" which identifies chloride sources and strategies for reducing sources. The Report identified the potable water supply as the largest source and self-regenerating water softeners as the second largest source of chloride loading (LARWQCB, 2006b).

As described in Table 10, the LARWQCB recently adopted revisions to the chloride TMDL that would accelerate the final TMDL completion date and incorporate time-certain tasks

related to the design and treatment facilities into the Implementation Plan (LARWQCB , 2000b).

2.6.2 Nitrogen

The LARWQCB adopted a nutrient TMDL in late 2003 for the upper Santa Clara River that addresses the Section 303(d) List for nitrate plus nitrite impairment (LARWQCB, 2003). The TMDL limits nitrate (NO_3), nitrite (NO_2), ammonia (NH_3), and total nitrogen (N). Principal sources of nitrogen to a watershed typically include discharges from water reclamation plants and runoff from agricultural activities. Elevated nitrogen concentrations (ammonia, nitrate, and nitrite) can cause impairments in warm water fish and wildlife habitat, along with contributing to eutrophic effects such as algae growth and low dissolved oxygen.

SECTION 3

Updated Water Supply Characteristics

3.1 Existing and Planned Local Supplies

The following discussion of the existing conditions regarding water supply in the Santa Clarita Valley is based on the new information, facilities, plans and reports (outlined above).

3.1.1 Groundwater

The East Subbasin of the Santa Clara River Valley Groundwater Basin (Basin) is the sole source of groundwater for urban use in the Santa Clarita Valley. Two aquifers in this Basin are used for domestic and agricultural supply – the Alluvial and Saugus Formation aquifers.

The groundwater component of overall water supply in the Valley is managed based on a groundwater operating plan developed over the last 20 years to meet water requirements (municipal, agricultural, small domestic) while maintaining the Basin in a sustainable condition (i.e., no long-term depletion of groundwater or interrelated surface water). This operating plan also addresses groundwater contamination issues in the Basin. The groundwater operating plan is based on the concept that pumping can vary from year to year to allow increased groundwater use in dry periods and increased recharge during wet periods and to collectively assure that the groundwater basin is adequately replenished through various wet/dry cycles. As formalized in the GWMP, the operating yield concept has been quantified as ranges of annual pumping volumes.

Two formal reports have been produced under the Memorandum of Understanding between CLWA, the Local Purveyors, and United Water Conservation District (UWCD) that followed the GWMP of 2003. The first report, dated April 2004, documents the construction and calibration of the groundwater flow model for the Santa Clarita Valley. The second report, dated August 2005, presents the modeling analysis of the Local Purveyors' groundwater operating plan, described below. The primary conclusion of the modeling analysis is that the groundwater operating plan will not cause detrimental short or long term effects to the groundwater and surface water resources in the Valley and is therefore, sustainable[6].

3.1.1.1 Alluvial Aquifer

The groundwater operating plan includes pumping from the Alluvial aquifer in the range of 30,000 to 40,000 AFY in average/normal years, and slightly reduced pumping (30,000 to 35,000 AFY) in dry years (CLWA, 2005a). Current data indicate that the Alluvial aquifer remains in good operating condition and can continue to support groundwater pumping in

6 From "Analysis of Groundwater Basin Yield, Upper Santa Clara River Basin, Eastern Subbasin, Los Angeles County, California," prepared by CH2M HILL and Luhdorff and Scalmanini Consulting Engineers, August 2005.

the range stated above without adverse results (e.g., long-term water level decline or degradation of groundwater quality; CLWA, 2005a).

In 2002, as part of ongoing monitoring of wells for perchlorate contamination, perchlorate was detected in one well in the Alluvial aquifer located near the former Whittaker-Bermite facility. The detected concentration was slightly below the Notification Level for perchlorate (6 micrograms per liter), and the well has been inactivated for municipal water supply since the detection of perchlorate. In early 2005, perchlorate was detected in a second well in the Alluvial aquifer. Following the installation of wellhead treatment (in the fall of 2005), the second well was returned to water supply service. All other wells in the Alluvial aquifer operated by the Local Purveyors continue to be used for municipal water supply service; those wells near the Whittaker-Bermite property are routinely sampled and perchlorate has not been detected. Further information on the status of the remediation efforts of this contamination are described in Section 2.1.1.2 above.

3.1.1.2 Saugus Formation

The groundwater operating plan includes pumping from the Saugus Formation in the range of 7,500 to 15,000 AFY in average/normal years; it also includes planned dry-year pumping from the Saugus Formation of 21,000 to 35,000 AFY for one to three consecutive dry years (CLWA, 2005a). Such short-term pumping can be recharged during subsequent wet/normal years to allow groundwater levels and storage to recover, as it has in historical periods.

In 1997, ammonium perchlorate was discovered in four Saugus Formation wells in the vicinity of the former Whittaker-Bermite facility. All four of those impacted wells remain out of active supply service. All other wells in the Saugus Formation owned and operated by the Purveyors are available for municipal water supply service. As part of regular operation, those wells are sampled on a routine basis and perchlorate has not been detected. Despite the inactivated wells, the Purveyors still have sufficient pumping capacity in other wells to meet the planned normal range of Saugus pumping (see discussion in Section 2.1.1.2).

3.1.2 Recycled Water

Recycled water service was initiated in July 2003 and CLWA is permitted to deliver up to 1,700 AFY of recycled water. Future plans (currently under environmental review) would allow the delivery of up to 17,400 AFY (an additional 15,700 AF). The amount of recycled water used for irrigation purposes, at a golf course and in roadway median strips, was approximately 450 AF in 2005 (SCVWP, 2006).

3.2 Existing and Planned Imported Supplies

3.2.1 SWP Table A Supply

CLWA holds a water supply contract to the SWP with DWR. CLWA's contractual "right" to the SWP (the Table A Amount) is 95,200 AF[7]. Climatic conditions and other factors can significantly alter the availability of SWP water in any year, and DWR makes annual allocations of SWP water based on that year's hydrologic conditions, the amount of water in storage in the SWP system, and SWP contractors' requests for SWP supplies. Based on the information provided in the 2005 SWP Delivery Reliability Report (see Section 2.4.4), CLWA's average or normal year SWP supply is anticipated to range from approximately 67,600 AF in 2010 to approximately 73,300 AF in 2030. Additional SWP supplies may be available in above-average years, and conversely, CLWA's SWP supply would be less in below-average years (see Table 8).

3.2.2 CLWA and Ventura County Flexible Storage Account

Flexible storage is storage available to SWP contractors that share in repayment of the costs of terminal reservoirs (Castaic and Perris lakes). These contractors may withdraw water from their share of flexible storage, in addition to any other SWP supplies available to the Contractor. The Contractor must replace any water it withdraws from flexible storage within five years.

CLWA may withdraw up to 4,684 AF of water from Castaic Lake as flexible storage (CLWA, 2005a). CLWA manages this storage by keeping the account full in normal and wet years and then withdrawing that stored amount (or a portion of it) to deliver during dry periods. The account is refilled during the next year that adequate SWP supplies are available to CLWA to do so.

In addition, CLWA has negotiated with Ventura County water agencies to obtain the use of their Flexible Storage Account. As part of this agreement, CLWA has access to another 1,376 AF of storage in Castaic Lake on a year-to-year basis for ten years, beginning in 2006 (CLWA, 2005a).

3.2.3 Semitropic Groundwater Banking Projects

CLWA has two groundwater banking agreements with the Semitropic Water Storage District (refer to Section 2.2.1). CLWA stored some of its SWP water from 2002 and 2003 in accordance with these agreements, and can withdraw up to 50,870 AF of water to meet its demands over a ten-year period (until 2012/13). Once the current storage amount is withdrawn, the supply would no longer be available. This banking project improves the reliability of CLWA's supplies.

[7] As described in Section 2.2.2, legal challenges are pending for the transfer of 41,000 AF of Table A Amount from WRMWSD to CLWA. The new certified EIR completed by CLWA in 2004 is by law deemed to be legally adequate until it is established by a court that the EIR is not supported by substantial evidence.

3.2.4 Rosedale-Rio Bravo Water Storage District Groundwater Storage, Banking, Exchange, Extraction and Conjunctive Use Program

As described in Section 2.2.3 of this Appendix, CLWA has a water banking agreement with RRBWSD, and CLWA can store and later withdraw up to 20,000 AFY of its total SWP Table A Amount. Modifications to RRBWSD facilities or extra capacity in these facilities would allow CLWA to withdraw up to an additional 25,000 AFY for a total annual withdrawal of 45,000 AF. This supply would typically be used only in dry years. This banking project improves the reliability of CLWA's supplies.

3.2.5 Water Acquisition from the Buena Vista Water Storage District and Rosedale-Rio Bravo Water Storage District Water Banking and Recovery Program

As described in Section 2.2.4 of this Appendix, CLWA is evaluating a water acquisition agreement with the BVWSD and the RBWSD. Through this water acquisition agreement, CLWA would have rights to purchase the 11,000 AF annually from BVWSD/RRBWSD during the term of CLWA's SWP Contract (2035) with an option to extend to a later date. This 11,000 AF of water acquired by CLWA would be used to meet current and future demand in its service area or the service area as it may be extended through annexation. An additional 9,000 AF would be available for purchase from year-to-year, depending on the hydrologic conditions and water availability. This additional water would only be available periodically, and while it would increase the water supply reliability for the CLWA service area, it would not support new development. These supplies are planned for the future and are not part of CLWA's existing supply.

3.3 Summary of Existing and Planned Water Supply

Existing and planned water supplies are shown by source in Table 6 (above), and summarized in Table 11 below. Existing and planned banking programs are summarized in Table 11, but because these programs would typically be used only during dry years, they are not included as part of the existing and planned water supply for the Santa Clarita Valley.

TABLE 11

Summary of Current and Planned Water Supplies in the CLWA Service Area

Water Supply Sources	Supply (AF)					
	2005	2010	2015	2020	2025	2030
Existing Supplies						
Imported	70,380	73,660	75,560	76,080	77,980	77,980
Local Supplies	41,700	47,700	47,700	47,700	47,700	47,700
Total Existing Supply	**112,080**	**121,360**	**123,260**	**123,780**	**125,680**	**125,680**
Existing Banking Programs						
Total Existing Banking Programs	**50,870**	**70,870**	**20,000**	**20,000**	**20,000**	**20,000**
Planned Supplies						
Local Supplies	0	10,000	11,600	26,300	31,000	35,700
Transfers	0	11,000	11,000	11,000	11,000	11,000
Total Planned Supplies	**0**	**21,000**	**22,600**	**37,300**	**42,000**	**46,700**
Planned Banking Programs						
Total Planned Banking Programs	**0**	**20,000**	**20,000**	**20,000**	**20,000**	**20,000**

Source: CLWA, 2005a; CLWA, 2005b.

Note: The values shown under “Existing Supplies” and “Planned Supplies” are supplies projected to be available in average/normal years. The values shown under “Existing Banking Programs” and “Planned Banking Programs” are either total amounts currently in storage, or the maximum capacity of program withdrawals. Refer to Table 6 for more information.

SECTION 4

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SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

SIERRA CLUB, et al., Petitioner, vs. CITY OF SANTA CLARITA, et al., Respondent.	CASE NO. BS 098 722 DECISION ON SUBMITTED MATTER
NEWHALL LAND AND FARMING, Real Party in Interest.	

Having taken the matter under submission on May 31, 2005, having considered all the evidence admitted and the parties' oral and written arguments, the Court rules as follows:

Petitioners Sierra Club, Center for Biological Diversity, Friends of the Santa Clarita River, and California Water Impact Network ("Petitioners") seek a Writ of Mandate commanding Respondents City of Santa Clarita and Santa Clarita City Council ("City" or "Respondents") to set aside its decision certifying the Final Environmental Impact Report ("FEIR") and approving the Project known as Riverpark in favor of Real Party in Interest Newhall Land and Farming ("Newhall").

The Riverpark project is located on a 695.4-acre site. Originally, Riverpark proposed 1,183 residential units, consisting of 439 single-family homes and 744 apartments, and 40,000 square feet of commercial development, a trail system, a 29-acre active/passive park along the Santa Clara River, and approximately 442 acres of open space area, including most of the Santa Clara River. (2:1 AR, Tab 4, 340-42 [Draft EIR, § 1.0, Project Description].) Through the public hearing process, the project was revised by converting the apartments to condominiums or townhouses, reducing to 1,123 the residential units and to 16,000 square feet commercial development, and preserving additional areas of the Santa Clara River and its south fork. (10 AR, Tab 12, 11742-44 [FEIR, Project Revisions and Additional Information].) Further hearings in 2005 reduced the residential units to 1,089, consisting of 432 single family homes and 657 condominium/townhouses, and provided for the preservation of more land and river areas, totaling 788 acres (470-acres on-site) for recreation and open space. (10 AR 11742-44; 9 AR, Tab 11, 11418-22.) Included among the 318 off-site acres are the remaining portions of the south fork of the Santa Clara River owned by RPI, and 37 acres of the Santa Clara River significant ecological area ("SEA").

Project approvals included a General Plan Amendment, a Zone Change, a vesting tentative tract map, a conditional use permit to build in excess of two stories and a maximum of 50-feet, Hillside Innovative Application, a permit for vehicular gating, a variance to reduce setback requirements and to build sound walls in excess of 7 feet, Hillside Development Application, and an Oak Tree Permit. (1 AR, Tab 2, 9-114; 2 AR 259.)

The Planning Commission held 9 hearings and on 12/21/04 recommended that the City Council certify the EIR and adopt a Statement of

Overriding Considerations for impacts that could not be mitigated to a less than significant level. (1 AR, Tab 2, 9-22 [App. Reso.]; 7:2 AR, Tab 9, 8079-81 [12/21/04 Hearing Transcript]; 73 AR, Tab 652, 51639-43 [12/21/04 Staff Report].)

The City Council held 3 hearings and certified the EIR on 5/24/05, unanimously approving the project on 6/14/05. (1 AR, Tab 2, 22-26; 1 AR, Tab 3, 115-229.)

Petitioner filed within Petition for Writ of Mandate alleging non-compliance with CEQA.

To establish violation of the California Environmental Quality Act ("CEQA"), Petitioner must show an abuse of discretion in that the County either failed to proceed in the manner required by law or the determination or decision is not supported by substantial evidence. (Code Civ. Proc., § 1094.5(b); Pub. Resources Code, §§ 21168, 21168.5.) When CEQA non-compliance is alleged, the Court reviews the entire record to see if substantial evidence supports the challenged determinations.

"Substantial evidence" is defined as "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached." (14 Cal. Code Regs., § 15384(a); Laurel Heights Improvement Assn. v. Regents of University of California (1988) 47 Cal.3d 376, 393.) Substantial evidence may include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts, but not argument, speculation, unsubstantiated opinion, or clearly erroneous evidence. (Pub. Resources Code, §§ 21080(e)(1)(2), 21082.2(c).)

"[I]n applying the substantial evidence standard, the reviewing court must resolve reasonable doubt in favor of the administrative

finding and decision. As such, if there are conflicts in the evidence, their resolution is for the agency." (River Valley Preservation Project v. Metropolitan Transit Development Board (1995) 37 Cal. App. 4th 154, 168.) Determinations in an EIR must be upheld if supported by substantial evidence, and the mere presence of conflicting evidence in the administrative record does not invalidate them. (Chaparral Greens v. City of Chula Vista (1996) 50 Cal.App.4th 1134, 1143.) An agency's approval of an EIR may not be set aside on the ground that an opposite conclusion would have been equally or more reasonable. (Laurel Heights Improvement Assn. v. Regents of University of California (1988) 47 Cal.3d 376, 393.) The Court's role is not to substitute its judgment for that of the local agency representatives, but to enforce legislatively mandated CEQA requirements. (Citizens of Goleta Valley v. Board of Supervisors (1990) 52 Cal.3d 553, 564.) The Court passes only upon the EIR's sufficiency as an informative document, not upon the correctness of its environmental conclusions. (Laurel Heights at 392.)

I. City Properly Relied on the 41,000 AFY Water Transfer for Planning Purposes

Petitioners contend that the City is legally precluded from relying on water from the transfer of 41,000 AFY acre feet per year ("AFY") of State Water Project ("SWP") water to the local SWP wholesaler, Castaic Lake Water Agency ("CLWA") ("41,000 AFY transfer") for planning purposes, and the EIR's reliance on water supplies is not supported by substantial evidence.

The water for the Riverpark project is to be supplied by CLWA.

In 1999, CLWA entered into a contract with the Kern Delta Water District for transfer of 41,000 acre feet per year (AFY) as part of the

"Monterey Agreement."[1] The CLWA certified an EIR for the 41,000 AFY transfer tiered on the earlier program EIR that had been prepared for the Monterey Agreement.

In Planning and Conservation League v. Dept. of Water Resources (2000) 83 Cal.App.4th 892 ("PCL"), the PCL challenged the Monterey Agreement program EIR. The Court of Appeal held that the EIR should have been prepared by DWR as the lead agency, rather than by one of the contractors, and that a new EIR must be prepared and certified by DWR. The Court did not invalidate the Monterey Agreement or enjoin the water transfers effected thereunder, but directed the trial court to consider under CEQA section 21168.9 whether the Monterey Agreement should remain in place pending preparation of DWR's new EIR, and to retain jurisdiction pending certification of DWR's EIR.

In Friends of Santa Clara River v. CLWA (2002) 95 Cal.App.4th 1373 ("Friends I"), the Court of Appeal ordered CLWA's EIR decertified because it had been tiered from the Monterey Agreement EIR, adjudged inadequate: "We have examined all of appellant's other contentions and find them to be without merit. If the PCL/tiering problem had not arisen, we would have affirmed the judgment." (Friends, supra, at 1387.) The Court did not issue any ruling affecting CLWA's ability to continue to use and rely on water supplies from the 41,000 AFY Transfer, leaving it to the trial court's discretion whether to enjoin CLWA's use of the water pending its completion of a new EIR. (Friends, supra, at 1388.)

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[1]An excellent history of the SWP and the role of Department of Water Resources ("DWR") in the management of the SWP, the Monterey Agreement and amendments, and relevant litigation is set forth in Calif. Oak Foundation v. Santa Clarita, 133 Cal.App.4th 1219 (2005).

In September 2002, on remand to the Los Angeles County Superior Court, the Friends petitioners applied under CEQA section 21168.9 to enjoin CLWA from continuing to use and rely on water from the 41,000 AFY Transfer. The trial court rejected that request, and in December 2003, the Court of Appeal affirmed the trial court's ruling allowing CLWA to continue to use and rely on water from the 41,000 AFY Transfer pending completion of its new EIR. (Id.; see also, Friends of the Santa Clara River v. Castaic Lake Water Agency, 2003 WL 22839353 ("Friends II"] at Tab 7, 5 AR 4180-97.)

Meanwhile, on 5/5/03, before the trial court acted on remand, the parties to the PCL litigation entered into the Monterey Settlement Agreement.[2] Section II of that agreement provides that SWP would continue to be administered and operated in accord with both the Monterey Amendments and the terms of the Monterey Settlement Agreement. (5:1 AR, Tab 7, 4367.) The Monterey Settlement Agreement did not invalidate or vacate the Monterey Amendments, or any water transfer effected under them.

A. PCL, Friends of the Santa Clara River and California Oak do not preclude reliance on the 41,000 AFY Water Transfer

Petitioners contend that legal uncertainties surrounding the 41,000 AFY transfer due to the PCL and Friends lawsuits preclude the City from relying on water from that transfer for planning purposes. Specifically, Petitioners contend that because PCL requires the Department of Water Resources ("DWR") to prepare an EIR analyzing the

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[2]On 6/6/03, the Sacramento County Superior Court issued its Order under CEQA section 21168.9, approving both the Monterey Settlement Agreement, and the continued operation of the SWP pursuant to the Monterey Amendment and the approved Monterey Settlement Agreement. (See 6 AR, Tab 8, 6557; 8 AR, Tab 10, 9775-78 [Order].)

effects of the eight SWP water transfers completed under the Monterey Agreement, none of those transfers, including the 41,000 AFY transfer, can be relied on for planning purposes until DWR has completed and certified that EIR. Moreover, Petitioners contend that the Court of Appeal so held in California Oak Foundation v. City of Santa Clarita (2005) 133 Cal.App.4th 1219.

PCL, Friends and California Oak (discussed infra) do not preclude reliance on the 41,000 AFY transfer for planning purposes.

While the Courts of Appeal could have simply said that all EIRs requiring reliance on the 41,000 AFY transfer, must await the certification of a new FEIR by DWR (and resolution of any litigation challenging such FEIR), they have not done that.

Although the Court in Friends and California Oak observed that CLWA "may be able to cure the PCL problem by awaiting action by the [DWR] complying with the PCL decision, then issuing a subsequent EIR, supplement to EIR, or addendum . . . tiering upon a newly certified Monterey Agreement EIR" (California Oak, supra, 133 Cal.App.4th at 1230, n.6), neither court said that the CLWA and City of Santa Clarita must await the DWR FEIR.

CLWA certified a new EIR on the 41,000 AFY Transfer on 12/22/04. (Tab 10, 8:2 AR 10441-480 [CLWA Resolution certifying the EIR]; see also Tab 637, 63 AR 43468-44683 [CLWA FEIR]; Tab 12, 10 AR 11750 [Final Riverpark EIR Project Revisions and Additional Information.) This new EIR analyzes the effects of the 41,000 AFY Transfer without tiering from the Monterey Agreement EIR.[3] Although CLWA's EIR is currently being

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[3]The CLWA EIR concludes that the Monterey Settlement Agreement neither requires that DWR's new EIR be certified before CLWA can certify its new EIR for the 41,000 AFY Transfer, nor requires that DWR's new EIR

challenged, CEQA requires that the EIR be conclusively presumed to comply with CEQA, until a court has judged it deficient. (See. e.g., CEQA, § 21167.3(b), CEQA Guidelines, § 15231; see also, Barthelemy v. Chino Basin Water Dist., supra, 38 Cal.App.4th 1609, 1617.)

Since the prior CLWA EIR for the 41,000 AFY Transfer was overturned solely because it tiered from a later-decertified Monterey Agreement EIR, and CLWA has now certified an EIR approving the 41,000 AFY Transfer without tiering from the Monterey Agreement EIR,[4] the City reasonably included water from the 41,000 AFY Transfer in CLWA's supplies, after considering at length the current status of all litigation.[5]

B. The 41,000 AFY transfer is sufficiently certain and the Monterey Settlement Agreement does not preclude Respondents from relying on said transfer in its EIR pending DWR's preparation of its EIR.

As argued by Respondents, three provisions in the Monterey Settlement Agreement, read together, refute Petitioners' argument that the 41,000 AFY Transfer was excluded from Attachment E because it was a non-permanent transfer, which may not be used for planning purposes.

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serve as the EIR for that Transfer. (Tab 637.63 AR 43987-92 [CLWA Master Response to Comments].) These conclusions are consistent with Friends II, that the 41,000 AFY Transfer is *not* legally bound to the PCL litigation or to DWR's new EIR. (Tab 7, 5:1 AR 4195-4196.)

[4]Although DWR is in the process of certifying its own EIR pursuant to PCL and the Monterey Settlement Agreement, DWR approved CLWA's preparation of its EIR in a comment letter on the Draft EIR, and noted that CLWA's Draft EIR "adequately and thoroughly discusses the proposed project and its impacts," and "adequately discusses the reliability of the SWP, pre- and post-Monterey Amendment conditions, future conditions and SWP operations." (Tab 637, 63 AR 43482-83.)

[5]Respondents' Riverpark EIR discusses the prior litigation and devotes 8 pages to discussion of the litigation surrounding CLWA's EIR on the 41,000 AFY Transfer in its response to comments alone. (Tab 8, 6 AR 6551-6559.)

Section III(C)(4) requires DWR to conduct an "[a]nalysis of the potential environmental impacts relating to" all eight of the completed water transfers, not just of the 41,000 AFY Transfer (Tab 7. 5:1 AR 4368-69) and to analyze all of the transfers in the same manner, even though seven of them, defined in the Agreement as the "Attachment E Transfers," were beyond challenge. (Id. [Section III(C)(4)j; Tab 7, 5:1 AR 4370 [Sections III(D), III(E)].) Section III(D) precludes challenges to the Attachment E Transfers, which had been litigated in other forums or had become final without challenge by the expiration of limitation periods. (Tab 7. 5:1 AR 4370.) Section III(E) acknowledges the jurisdiction of Los Angeles Superior Court over the then-ongoing Friends litigation challenging CLWA's EIR on the 41,000 AFY Transfer (Tab 7, 6 5:1 AR 4370) pending completion of CLWA's new EIR, but does not distinguish the 41,000 AFY Transfer from the Attachment E transfers otherwise.

The Monterey Settlement Agreement does not prohibit reliance on the 41,000 AFY Transfer. All of the water transfers were effected as permanent transfers under the Agreement and are to be analyzed in the same way in DWR's new EIR, as required by Section III(C)(4).

Petitioner contends that the continued availability of the 41,000 AFY transfer is uncertain until DWR has concluded its EIR and that under California Oak, the City may not presume that the outcome of DWR's environmental review will be the continued availability of the 41,000 AFY.

DWR, however, has recognized the 41,000 AFY Transfer as a permanent transfer under the Monterey Agreement by entering into Amendment No. 18 to CLWA's agreement, which increases its Table A Amount by 41,000 AFY (Tab 10, 8:1 AR 9212-14), and has since consistently allocated water

supplies to CLWA based on that entitlement (Tab 4, 2:2 AR 1015-17 [DEIR]). Furthermore, as noted supra, DWR also submitted positive comments on CLWA's Draft EIR. (Tab 637, 63 AR 43482-83).

DWR's analysis of the 41,000 AFY Transfer in its new EIR will be part of a broader analysis of past and future permanent transfers of Table A Amounts, and will not constitute the EIR for the 41,000 AFY transfer. (5:1 AR, Tab 7, 4369.) As noted supra, PCL, Friends and the Monterey Settlement Agreement do not prohibit CLWA's preparation of its new EIR addressing the impacts of the 41,000 AFY transfer. (Tab 637, 63 AR 43987-92 [CLWA Master Response to Comments].)

California Oak, being most recent, deserves further discussion. In California Oak, the Court struck down the City's certification of an earlier EIR for an industrial project because it did not address the legal uncertainties surrounding the 41,000 AFY Transfer. California Oak did not bar the use of water from the 41,000 AFY transfer for all planning purposes. It criticized the City's failure to explain its reasoning for relying on the 41,000 AFY transfer, but held that it was up to the City to determine whether or not to rely on the 41,000 AFY transfer in its planning. The Court stated: "*[T]he question is whether the entitlement should be used for purposes of planning future development*, since its prospective availability is legally uncertain. *Although this decision must be made by the City*, the EIR is intended to serve as an informative document to make government action transparent. Transparency is impossible without a clear and complete explanation of the circumstances surrounding the reliability of the water supply." (Id. at 1237-38; emphasis supplied.) Before relying on water from the 41,000 AFY transfer for planning purposes, the City must "present a reasoned analysis of the significance . . . [or insignificance] of the

decertification of the EIR for the Castaic purchase; how demand for water would be met without the 41,000 AFY entitlement; or why it is appropriate to rely on the 41,000 AFY transfer in any event." (Id. at 1244.)

The Court in California Oak ruled that the EIR contained an inadequate discussion, in fact no discussion at all, of the uncertainty regarding the 41,000 AFY transfer in the EIR itself, but only references to it in the appendices, and responses to comments. The text of the EIR did not mention the decertification of the CLWA EIR, or that "entitlements are not really entitlements, but only 'paper' water." (California Oak, supra, 133 Cal.App.4th at 1236.) From the EIR, the Court could only assume that City concluded the 41,000 AFY would continue to be available, but found that the lack of a forthright discussion of a significant factor that could affect water supplies was antithetical to the purpose of an EIR to reveal to the public the basis on which officials approve or reject environmental action. (Id. at 1237-38). Thus, the Court held that the EIR failed to inform the public of the litigation uncertainties surrounding the 41,000 AFY transfer, and substantial evidence did not support the City's decision to rely on water from that transfer for planning purposes.

Here, by contrast, the City discussed the 41,000 AFY transfer and its uncertainties at considerable length, both in the EIR and throughout the review process. (See infra, pp. 12-16.) The PCL, Friends, Friends II, and California Oak decisions were all discussed. The City concluded that it was likely that the 41,000 AFY would be available for the project. By the time the City Council held it first Riverpark hearing on 1/25/05, the City also had before it CLWA's certified new EIR for the 41,000 AFY transfer, which was not the case in California Oak.

The Riverpark EIR adequately discloses the uncertainties regarding the 41,000 AFY transfer and discusses them forthrightly.

C. Substantial evidence supports reliance on 41,000 AFY water transfer and the EIR's analysis of the transfer is not flawed

Petitioners contend that substantial evidence does not support the City's decision to rely on water from the 41,000 AFY Transfer.

As noted, California Oak held that, as long as the city has analyzed the uncertainties surrounding this water supply, it is within the City's province to decide whether to rely on the 41,000 AFY Transfer for planning purposes.

The EIR and the Administrative Record contain substantial evidence supporting the City's decision that water from the 41,000 AFY Transfer can be relied on as part of CLWA's supplies.

CLWA, the SWP and the reliability of its water supplies, the Monterey Agreement, the PCL litigation, the Monterey Settlement Agreement, CLWA's Table A Amounts, and the Friends litigation are all extensively discussed in the EIR. The City specifically discloses that a future adverse judgment invalidating the Monterey Agreement could affect CLWA's ability to use water from the 41,000 AFY transfer and adversely affect CLWA's water supplies over the long term, but that, based on the information discussed, CLWA (the experts concerning water supply) believed that such a result "is unlikely to >unwind' executed and completed agreements with respect to the permanent transfer of SWP Water Amounts." (Tab 4,2:2 AR 1014-15; see also, Tab 8,6:2 AR 6551-59 [TR-3].) Further, the EIR notes the 41,000 AFY Transfer was completed in 1999, CLWA has paid approximately $47 million for the additional Table A Amount, the monies have been delivered, the sales price has been financed through CLWA by tax-exempt bonds, and DWR has increased CLWA's

SWP maximum Table A Amount and delivered or made available to CLWA the 95,200 AFY because it was a permanent transfer/reallocation of SWP Table A entitlement between SWP contractors." (Tab 4, 2:2 AR 1013.) Included in the EIR's Appendices and referenced in the EIR, are the 19 documents supporting the EIR's analyses, including the PCL decision, the Monterey Settlement Agreement, the Sacramento County Superior Court's "Order Pursuant to Public Resources Code Section 21168.9," the Friends decision, the Los Angeles County Superior Court's Judgment on remand in the Friends litigation, CLWA's final EIR for the 41,000 AFY Transfer, and CLWA's Resolution certifying that EIR.

The City responded to numerous comments challenging the EIR's conclusion that CLWA could rely on the 41,000 AFY Transfer for planning purposes. Due to the number of comments, and the amount of information required to respond, the City prepared a "master" response on this subject, TR-3 (Tab 8, 6:2 AR 6551-59). TR-3 reviews the information disclosed in the EIR's Water Services section regarding the 41,000 AFY Transfer and the Friends litigation, then responds to comments asserting that: (i) the PCL litigation and Monterey Settlement Agreement preclude CLWA from using or relying on that water transfer, and (ii) because the Monterey Settlement Agreement requires DWR to prepare a new EIR on the Monterey Agreement, CLWA cannot rely on the water transfer until that new EIR is completed. The City also prepared responses to individual comment letters on the 41,000 AFY Transfer[6] All of these comments and

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[6]See, for example, responses to comments from the Santa Clarita Organization for Planning and the Environment (Tab 8, 6 AR 5962-66, 6689-6717), Petitioners Sierra Club (Tab 8, 6 AR 6194-6201, 6370, 6737-66, 6829-30), California Water Impact Network (Tab 8, 6 AR 6273-74, 6767-75), Friends (Tab 8, 6 AR 6387, 6835-36), and from a law firm involved in the PCL litigation (Tab 8, 6 AR 6275-78, 6776-83).

responses are included in the Riverpark Final EIR.

The City's Planning Commission also held a study session on the subject of the reliability of available water supplies. (Tab 9, 7 AR 7480-92.)

Ultimately, the City reviewed all of this information, and the views expressed in the EIR, by CLWA, and by commentators opposed to the City considering the 41,000 AFY Transfer, and determined it was appropriate for the City to rely on those SWP supplies. (Tab 2, 1 AR 9-114 [App. Reso]; Tab 3. 1 AR 174-220 [CEQA Findings].) The City explained that its determination to allow Riverpark to rely on the 41,000 AFY Transfer was supported by the information in the EIR for four main reasons: (i) nothing in the Monterey Settlement Agreement or in any court decision precludes that reliance; (ii) nothing in the Monterey Settlement Agreement precludes CLWA from preparing and certifying its revised EIR for that transfer as instructed by the Court of Appeal in the Friends decision and, in fact, the Settlement Agreement was carefully crafted to leave that EIR and any required remedies to the Los Angeles County Superior Court; (iii) the fact that DWR is preparing an EIR that will analyze all of the water transfers under the Monterey Agreement does not preclude CLWA from preparing and certifying its revised EIR, as instructed by Friends; and (iv) CLWA's Final EIR re-approving the transfer had been certified without tiering from the Monterey Agreement EIR. (Tab 8, 6:2 AR 6558-59 [TR-3]; Tab 10, 8:2 AR 10441-10480; Tab 12, 10 AR 11750.)

As directed by California Oak, the City here has analyzed in considerable detail the uncertainties surrounding the AFY water transfer and explained the basis for its reliance on that transfer. The City's

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determinations are not an abuse of discretion, but supported by substantial evidence.

Petitioners' contention that the City makes false statements about the transfer (OB 7-9) is not borne out by the record.

The City's statement reads: "Because the 41,000 AF was a permanent water transfer, because DWR includes the 41,000 AF in calculating CLWA's share of SWP Table A Amount, and because the courts have not prohibited CLWA from using or relying on those additional SWP supplies, the City has determined that it remains appropriate for the Riverpark project to include those water supplies in its water supply and demand analysis, while acknowledging and disclosing uncertainty created by litigation." (Tab 8, 6:2 AR 6768-69.)

This statement is qualified and explained by the City's extensive discussion of the legal uncertainties arising from litigation, supra, and is not misleading. The statement cannot be taken out of context and must be read in light of other statements and evidence in the record. As regards "reliance on the fact that DWR counts the 41,000 AFY in Table A amounts, DWR has acknowledged the 41,000 AFY Transfer by continuously delivering SWP water, including water from the Transfer, to CLWA for many years. The Monterey Settlement Agreement treats the 41,000 AFY Transfer identically to the Appendix E Transfers. The City's discussion of the reliability of SWP water supplies, including the 41,000 AFY Transfer water, is a discussion relating to the ability of the SWP to deliver only such supplies as are available on a year-to-year basis. (See, e.g., Tab 4, 2:2 AR 1022-30.) The City discussed the reliability of available SWP supplies under average, dry and critical dry years, and that there would be sufficient supplies to meet Riverpark's demand and cumulative demand. (Id. at 1051-70.)

Unlike California Oak, the record shows that the City considered the 41,000 AFY transfer in the EIR, including the legal uncertainties, the reliability of available supplies of SWP water in general, and concluded, based on substantial evidence, that it was appropriate to rely on those supplies for planning purposes. The City also considered and responded to numerous comments. After 12 hearings before the Planning Commission and City Council, the City certified the EIR and approved Riverpark, knowing that water supplies from the 41,000 AFY Transfer were to some degree uncertain, but explaining the reasoning for its determinations and the evidence that supported it. That is all that CEQA and California Oak require.

II. Impacts on Biological Resources were Appropriately Evaluated

Petitioner contends that the project's impact on three special-status species, the western spadefoot toad ("Toad"), the San Diego back-tailed jackrabbit ("Jackrabbit") and the holly-leaf cherry woodlands ("Holly-Leaf") must be considered significant because they are "rare" within the meaning of CEQA, the EIR's responses to comments by Department of Fish and Game ("DFG") were inadequate, as were mitigation measures for the Toad and Jackrabbit.

CEQA Guidelines section 15065(a) provides: "A lead agency shall find that a project may have a significant effect on the environment and thereby require an EIR to be prepared for the project where there is substantial evidence, in light of the whole record, that . . . : (1) The project has the potential to . . . substantially reduce the number or restrict the range of an endangered, rare or threatened species . . . ." (Guidelines, § 15065(a); 51 AR 33996.)

Here, an EIR was prepared and the impacts on the Toad, Jackrabbit, and Holly-Leaf considered. Petitioner contends that, to assess the

significance of the project impacts on the Toad, Holly-Leaf, and Jackrabbit, the EIR was required to determine whether the species are "rare" under Guidelines section 15380(b)(2)(A), which defines "rare" as "[a]lthough not presently threatened with extinction, the species is existing in such small numbers throughout all or a significant portion of its range that it may become endangered if its environment worsens."

The EIR's conclusions with regard to these species are supported by substantial evidence.

Toad

The EIR concluded that impacts on the Toad would be significant and unavoidable (Tab 7, 5:2 AR 5774, 5827).

The EIR describes the Toad as a special-status species (Tab 7, 5:2 AR 5720-5730, 5737, 5831-36; see also Tab 9, 7:2 AR 8572 [Revised Draft EIR ("RDEIR")]), and defines "special-status wildlife" to include rare species, that is, State Species of Special Concern and Federal Species of Concern. (Tab 7, 5:2 AR 5728.) The EIR notes that Toads were found in three seasonal rainpools created by human disturbances in the middle of areas planned for development: in the right-of-way for the extension of Newhall Ranch Road, in the middle of Planning Area A-1, and in the middle of Planning Area B (Tab 7, 5:2 AR 5832-34). The potential impacts on the Toad were analyzed in accordance with CEQA and City thresholds and found to be significant (id. at 5750-53, 5774). Mitigation was recommended in the form of pre-construction surveys, preparation of a Resource Management and Monitoring Plan ("RMMP"), design and construction of new enhanced Toad habitat and implementation of a capture and relocation and monitoring program. Ultimately the EIR concluded that the impacts would remain significant and unavoidable, because such measures have not yet been proven to he highly effective,

and because of the possibility that not all of the individual Toads could be successfully captured and relocated (id. at 5811).

The City's responses to comments and its actions addressed DFG's concerns (Tab 8, 6:1 AR 5880-86 [DFG letter], Tab 8, 6:2 AR 6621-30 [response]), and those of other commentators (see, e.g., Tab 8, 6:1 AR 5876-77 [Santa Monica Mountains Conservancy letter], Tab 8, 6:2 AR 6610-14 [response]). The City followed DFG's recommendations, the City's "Western Spadefoot Toad Habitat Enhancement and Mitigation Plan" ("Toad Plan") was created by the City's expert biologist in consultation with DFG and was ultimately approved by DFG.

Substantial evidence in the record supports the City's decision to mitigate the impacts on the Toad rather than reconfigure the Project. Such evidence included opinion of City's expert biologist that the Toad Plan was likely to succeed, and DFG's approval of that Plan. It properly exercised its discretion to consider the remaining impacts on the Toad to be significant and unavoidable, and adopted a Statement of Overriding Considerations for the Toad. (Tab 3, 1 AR 145-150, 155-163, esp. 159 [SOC].) Arguments similar to Petitioners' arguments here were rejected in Defend the Bay v. City of Irvine (2004) 119 Cal.App.4th 1261, 1276-77.

Jackrabbit

For the Jackrabbit, the Revised DEIR determined that "[b]ecause this species is not state or federally listed as Endangered or Threatened, because it is considered relatively abundant in suitable habitat areas within its range, and because the direct loss of individual jackrabbits is expected to be low, it is expected that the regional population would not drop below a self-sustaining level with the implementation of this project," the loss of any individual

jackrabbits would not be considered a significant impact. (Tab 7, 5:2 AR 5775.)

The EIR identifies the Jackrabbit as a State and federal special-status species, and determined the significance of impacts on that species based on CEQA and City thresholds that recognize substantial adverse effects on special-status species and substantial reduction of habitat as being significant impacts (Tab 7. 5:2 AR 5750-53). Based on field surveys (see, e.g., Tab 7, 5:2 AR 5707-08 [RDEIR, § 4.6; Tab 6, 4 AR 4153-54), the EIR reported that Jackrabbits. which occur in a variety of habitats, had been sighted on-site in the riverbed, open terraces and disked fields, but that because those areas are disturbed, the overall quality of the habitat on site suitable for Jackrabbits was only moderate. (Tab 7, 5:2 AR 5735, 5739, 5775; Tab 9, 7:2 AR 8572 [RDEIR].) The EIR noted that the Project had been designed to include all NRMP applicable mitigation measures for the areas in and adjacent to the Santa Clara River (Tab 7. 5:2 AR 5754-61, and 5789-5800 [RDEIR, § 4.61; Tab 9, 7:2 AR 8576 [RDEIR]), including preconstruction surveys, capture and relocation, and riparian habitat creation enhancement. (Id. at 5757-5759, and 5793-95 [RDEIR, § 4.6]; see also, Tab 9, 7:2 AR 8541-42 [RDEIR]).

The EIR concluded that project-level impacts would be less than significant, not just because Jackrabbit is not a listed species and does not require heightened protection, but also because the species is abundant where it occurs, and, since it is mobile and would likely disperse to nearby better habitat rather than be killed as the site is developed, few individuals would be lost due to development of the site. (Tab 7, 5:2 AR 5775.) Nevertheless mitigation including preparation of an RMMP and preconstruction surveys of areas outside the NRMP areas for

the potential capture and relocation of special-status species was recommended. (Tab 7, 5:2 AR 5800-01, 5809-10; Tab 9,7:2 AR 8543-45, 8584-85 [RDEIR pages].) The EIR also concluded that the project-level and cumulative impacts on an aggregate of 280 acres of habitat, in general, necessarily including that for Jackrabbits, would be significant and unavoidable even after mitigation (Tab 7, 5:2 AR 5761-62, 5811, 5825-26, 5827). A Statement of Overriding Considerations was adopted for these impacts. (Tab 3, 1 AR 145-163.)

The City did not ignore DFG's comments, but in response to DFG, stated that it had considered the NRMP and its EIS/EIR, which had earlier analyzed impacts on the Jackrabbit within the NRMP area (in and adjacent to the Santa Clara River), and found those impacts to be significant and imposed mitigation to reduce them to a less than significant level. (Tab 8, 6:2 AR 6622-23.) Those mitigation measures, the City explained, had been incorporated into the Project as design features, and that Riverpark scaled back the activities permitted by the NRMP, so that the activities within the NRMP area would have even less of an impact on the Jackrabbit than the NRMP EIS/EIR had determined. (Tab 8, 6:2 AR 6622-24.)

Development was moved further back from the Santa Clara River to protect riparian resources, including Jackrabbit habitat (including bank stabilization in a portion of the site). A public trail that had been proposed in the riverbed was moved out to join the pedestrian/bike bridge over the Aqueduct. (Tab 8, AR 6623-24; see also Tab 2, Tab 4, Tab 12 [FEIR, Final Project Revisions]; Tab 11) The City also explained that the mitigation requiring preconstruction surveys and capture and relocation was more definitive than DFG described B more than simply forcing individuals to disperse. As to cumulative impacts, the City

noted that because the NRMP's mitigation measures had been imposed on all of the land between the eastern border of Riverpark vest to Castaic Creek, and because Riverpark had been revised to preserve even more upland, the EIR had concluded that cumulative impacts on the species would be less than significant. (Tab 8, AR 6624.)

DFG disputed the EIR's conclusions without challenging the City's survey methodology. (Tab 8, AR 5882.) As the City's response to DFG's comment letter shows, the City considered DFG's comments, but disagreed with them. The City's response did not assert that the EIR relied solely upon the NRMP EIS/EIR's analysis of impacts on the Jackrabbit. (Tab 8, AR 6622-24.) Rather, the EIR conducted its own independent analysis. (Tab 7 [RDEIR, § 4.6]; Tab 6 [survey report]; Tab 9 [RDEIR].) The City's responses to DFG contained a reasoned explanation based on scientific information. (See CEQA Guideline ' 15088.) The City was not required to accept DFG's opinions over those of its own expert. (Assn. of Irritated Residents, supra, at 1394-97; Laurel Heights I, supra, 47 Cal.3d at 393-93.)

Substantial evidence supports the EIR's conclusions on the Jackrabbit. The evidence shows the EIR conducted its own analysis of the impacts on the Jackrabbit, and did not rely solely upon the NRMP EIS/EIR for that analysis.

Holly-Leaf Cherry Scrub

The surveys conducted by the Project's expert botanist concluded that the plant community identified was not "holly-leaf cherry woodlands," but "holly-leaf cherry scrub" ("HLCS"), which is different and one not specified in DFG's List of California Terrestrial Natural Communities recognized by the California Natural Diversity Data Base (i.e. without any State or federal protection). (Tab 7, AR 5716-17; Tab

416, 53 AR 37223, 37247 and Tab 6, 4 AR 3363, 3387 [DEIR appendices, 2003 and 2002 rare plant surveys Tab 8, 6:2 AR 6627 [response to DFG comments].)

Based on the evidence, including the rare plant surveys conducted in 2002 and 2003, and supporting evidence (Tab 6, AR 3359-82, 3383-95), the EIR reported the expert botanist's identification of the plant community on-site as HLCS (Tab 7, 5:2 AR 57 16-17). The EIR properly defined the class of plants that were considered to be "special status plants" (Tab 7, 5.2 AR 5722), and did not include HLCS within that class based on the botanist's expert opinion. Based on CEQA and City thresholds, the EIR concluded that the permanent disturbance of 3.6 acres of HLCS, which did not support special-status plant or wildlife species and is not considered to be sensitive by the resource agencies, was not significant (Tab 7. 5.2 AR 5767). As noted before, the EIR concluded that the project-level and cumulative impacts from disturbing an aggregate of 280 acres of habitat, in general, necessarily including HLCS, would be a significant impact, and unavoidable even after mitigation, and, a Statement of Overriding Considerations was adopted as to this impact (Tab 3, AR 145-163).

The City's response to DFG's comments on the HLCS was not "dismissive." The City responded that based on scientific and other information the identified plant community was not "holly-leafed cherry woodland," but HLCS, because the canopy did not amount to a woodland canopy, and that DFG does not include HLCS within its list of special status plant communities. Also because only 3.6 acres of habitat would be permanently impacted by the Project, and HLCS "stand of trees" was not considered a sensitive plant community as identified by the DFG, the

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loss of the 3.6 acres would be less than significant under CEQA. (Tab 8, AR 6627.)

Substantial evidence supports the conclusions that the HLCS on site was not a special status species, and that impacts to it alone would not be significant.

III. Description of the Project and Mitigation Measures

Petitioners contend that the EIR fails as an informational document to adequately describe the project or the mitigation measures, misstates the public and agency concerns raised in comment letters, and fails to meaningfully respond to them.

The EIR adequately describes impact on the Santa Clara River and is not misleading

Petitioners contend the project will damage the river and the EIR and the City's staff reports mislead by "perpetuat[ing] the myth that the project will improve the condition of the river," (OB 16-17) and by the statement in Final EIR that the project "has been designed to preserve the Santa Clara River corridor." (AR 28.)

A review of the record discloses extensive discussion in the EIR and staff reports concerning the encroachment into the Santa Clara River and the impacts to it. Among other things, the EIR discloses that the Project would install buried bank stabilization in the western portion of the site, but not the eastern portion where the river corridor would remain substantially undisturbed up to the eastern boundary where the Newhall Ranch Road Golden Valley Road Bridge would be built. (See Tabs 4, 5, 7, 11, 12.) There is evidence that buried bank stabilization is less harmful to the river and its resources than traditional cement stabilization, yet protects adjacent development adequately (Tab 11, 9 AR 10739-47 [FEIR, App. C. Functional AssessmentC Summary], 10877-90

[id., Hybrid Functional Assessment/Riverpark], 11180-97 [FEIR, App. G, Additional Hydrology and Water Quality Analyses], 11202-19 [id., Addendum No. 1], 11405-17 [id., App. J, Additional Flood and Floodplain Modifications data]). Furthermore, revisions to the Project would lessen intrusion into the SEA and protect mature riparian resources that serve as habitat (id., esp. Tab 11, 9 AR 11419-22, 11516 [FEIR App. K. Project Revisions and Additional Information]; Tab 12, 10 AR 11741-61 [FEIR Final Project Revisions]; Tab 11, 9 AR 11224-35 [FEIR App. 1. 7/20/04 Staff Report]). Other evidence shows that the overall (temporary and permanent) intrusion into the SEA was reduced from the original 37 acres to 32.1 acres, and the permanent intrusion from 24 to 16.9 acres. (Tabs 11, 12.) The Project was also revised to dedicate approximately 318 off-site acres, including the approximately 141-acre "Round Mountain" site containing 37 acres of Santa Clara River SEA, which will in part further offset the Project's impacts on biological resources and the floodplain (Tab 12). The City nevertheless still considered the Project's intrusion into the Santa Clara River SEA to be a significant and unavoidable impact, and included it in the Statement of Overriding Considerations (Tab 7.)

Thus, the City did not "ignore Riverpark's encroachment into the river." It considered at great length the Project's impacts on the river and adjacent areas and required changes in the Project to reduce those impacts.

The EIR adequately describes the project setting and is not misleading

The City found that "the proposed project is appropriate for the subject property," "proposes considerably lower densities than existing nearby developments," and that "[b]y proposing a maximum of 1,089

residential units and approximately 16,000 square feet of commercial space, the project proposes development that would be substantially less dense and less intense than those that both the current and the proposed land use classifications would allow." (1 AR 30.)

Petitioners contend the finding is incorrect, because the City "never actually calculated the number of residential units that can actually be built on the site," and the site's physical characteristics, such as topography, constrain the number of units that can be built on any given parcel.

The findings relating to the project setting are adequate under CEQA and not misleading. Prior to the approval of the General Plan Amendment and Zone Change proposed by the Project, the City's General Plan designations for the site permitted development more dense and intense than the now-approved designations. (See, e.g., Tab 4, 2:1 AR 346-48 [DEIR, § 1.0, Project Description], 830-837 [Id., § 4.7, Land Use]; Tab 4, 18 2:2 AR 947-52.)

There is no requirement the City must calculate exact number of units which actually can be built.

The EIR adequately describes on-site and off-site dedications to the City

Petitioners contend the EIR does not "adequately describe both the on-and off-site [land] dedications, which the City considers a significant benefit, and has identified as one main bases [sic] for over-riding the project's significant adverse impacts," and City staff and the EIR do not discuss in an Agenda Report to the City Council a Planning Commissioner's comments during a debate on whether the Commission would consider the Project's proposed dedication of portions of the South Fork of the Santa Clara River to be a benefit under the

City's Ridgeline Preservation and Hillside Development Ordinance (OB 24-28.)

Preliminarily, these issues were not raised during the administrative process and, consequently, are now barred. (CEQA, § 21177(a); see Park Area Neighbors v. Town of Fairfax (1994) 29 Cal.App.4th 1442, 1447-48.) Moreover, the dedications were not offered as mitigation measures, but as benefits in connection with the City's issuance of a Statement of Overriding Considerations and the Hillside Development Application. (Tab 3. 1 AR 147-1 50.)

In any case, CEQA requires that an EIR analyze a project's adverse environmental impacts, not its benefits. (See, e.g., CEQA, § 21002.1(a).) Dedication of on-site and off-site open space to the City to be preserved in perpetuity does not create adverse environmental impacts. Even so, the EIR does discuss the attributes of these land dedications. The on-site land to be dedicated was discussed extensively in the Draft EIR (see. e.g., Tab 4, AR 367 [DEIR, § 1.0, Project Description]; Tab 4, 2:2 AR 1214-44 [id., § 4.12, Parks and Recreation]; Tab 7, 5:2 AR 5689-5827 [RDEIR, § 4.6, Biological Resources]), as well as in City staff reports (Tab 604,61 AR 42947-42953; Tab 652, 73 AR 51639-51650; Tab 652, 73 AR 51651-51811; Tab 666, 74 AR 51913-51925; Tab 674, 74 AR 52073-52085; Tab 2-3, 1 AR 9-227) and in Planning Commission hearings (Tab 3, 1 AR 147-150). The attributes and benefits of the off-site land dedications are discussed in the Final EIR (see, e.g., Tab 12. 10 AR 11742-61 [FEIR. Final Project Revisions]; Tab 11, 9 AR 11419-22, 11516 [FEIR. App. K, map, land use table, new SEA chart]).

Failure to discuss comments in the agenda report is not fatal here. The Planning Commission debated which Project attributes should be considered as benefits in connection with their decision whether to

recommend approval of the Hillside Development Application, for which Newhall had submitted its Innovative Application Compliance Report. The EIR analyzed the land being dedicated to the extent necessary to inform the City and the public, and based on that information, the Planning Commission ultimately voted on which Project benefits it viewed as supporting the Hillside Development Application, including, without limitation, the on- and off-site land dedications (Tab 9,7:2 AR 8079-81 [12/21/04 HT]; Tab 652, 73 AR 51639-45, esp. 51643 [12/21/04 Staff Report]; Tab 2, 1 AR 15-18 [App. Reso.]). All of this information was before the City Council.

The EIR adequately describes on and off-site dedications and does not fail as an informational document in other respects.

IV. Alternatives Were Considered as Required by CEQA

An EIR's alternatives analysis must include a reasonable range of alternatives to the project that would feasibly obtain the basic objectives of the project and evaluate the comparative merits of the alternatives. (Guidelines, § 15126.6(a).)

Petitioners contend that the City's rejection of Alternative 2, the Santa Clara River Reduced Bank Stabilization Alternative, in the EIR and in its Findings was "disingenuous and pretextual, and therefore contrary to the mandates of CEQA" and not supported by substantial evidence.

Substantial evidence supports the determinations made by the City in rejecting Alternative 2 and finding that, due to the revisions to the Project, that alternative was no longer environmentally superior.

The City rejected Alternative 2 for multiple reasons.

After analyzing Alternative 2's impacts as compared to those of the Project as originally proposed, the EIR concluded that, while this alternative would reduce impacts in certain environmental areas

(including biological resources) and create similar impacts in other areas, it would create greater impacts on population/housing/employment and parks and recreation, and would not meet five of the project objectives. (Tab 4, 2:2 AR 1490-1500.) The EIR noted that the project objectives of (1) providing a substantial number of new housing units adjacent to existing and planned infrastructure, service, transit and transportation corridors and employment areas to accommodate projected growth, and (2) developing a range of housing types accommodating a range of incomes and commercial opportunities, would not be met due to the reduction in residential units (all of which were single-family units). (Tab 4, AR 1499.) The objective of providing adequate flood protection, including bank stabilization where necessary, would not he met because the alternative does not provide for bank stabilization. The objectives of providing sufficient parks to satisfy park dedication requirements and meet regional needs, and of providing a range of active/passive recreational opportunities, would not be met due to the reduction in the size of the flatter, active portion of the proposed 29-acre park. (Id.; see also 1497.)

As noted above, the original Project was substantially revised over the course of the 24 public hearings. The Project as revised and approved: (1) Moved all development back to the resource line established by the Planning Commission, which reduced the Project's intrusion into the SEA and protected mature riparian resources that serve as habitat (Id.. esp. Tab 11, 9 AR 11419-22, 11516 [FEIR App. K, Project Revisions and Additional Information]; Tab 12, 10 AR 11741-61 [FEIR, Final Project Revisions]; Tab 11,9 AR 11224-35 IFEIR App. 1,7/20/04 Staff Report]), (2) Moved the equestrian trail out of the river (Id. esp. Tab 12, 10 AR 11741-61 [FEIR, Final Project Revisions]),

(3) Reduced the Project's overall (temporary and permanent) intrusion into the SEA from the original 37 acres to 32.1 acres, and its permanent intrusion from 24 to 16.9 acres, 7.5 of which are attributable to the construction of Newhall Ranch Road and one of which is attributable to the Santa Clara River Trail (Id. esp. Tab 11, 9 AR 11516 [FEIR App. K, new SEA chart]; Tab 12, 10 AR 11741-61 [FEIR. Final Project Revisions]), (4) Was conditioned on an absolute prohibition of construction of any lots within the new FEMA floodplain boundaries (Tab 11, 9 AR 11406-09 [CLOMR]: Tab 12, 10 AR 11756, 11757-58 [FEIR, Final Project Revisions].) (5) Relocated the Newhall Ranch Road/Golden Valley Road Bridge abutments farther out of the active channel of the river, resulting in reduced impacts to biological resources in those riparian areas (Tab 11, 9 AR 11410-17 [FEIR App. J, Technical Memorandum Hydraulic Design and Analysis]; Tab 12, 10 AR 11758 [FEIR, Final Project Revisions]) and (6) Dedicated approximately 318 off-site acres, including, inter alia, the ARound Mountain" site containing 37 acres of Santa Clara River SEA, which further offset the Project's impacts on biota and the floodplain (Tab 12, 10 AR 11741-58 [FEIR, Final Project Revisions]).

Based on the evidence as regards the revised project, the City Council found that, as compared with the Project as approved, Alternative 2 was no longer environmentally superior because the new Project design reduced development, and thus impacts, in areas not affected by the revisions contemplated by Alternative 2, that although the approved Project would afford the City 94 fewer residential units, it still preserved a greater mix of housing opportunities than did Alternative 2, which reduced the number of single-family lots, and that

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the approved Project would donate substantial off-site acreage. (Tab 3, AR 139-140 [Alternatives Findings]; see also 156 & 3,156-159.)

The findings as to Alternative 2 are supported by substantial evidence and the record shows that the City Council considered and balanced all of the competing factors, and chose to approve the Project with those factors in mind.

V. City Properly Found that the Project is Consistent with General Plan Goals and Policies of Protecting Significant Natural Resources

Government Code section 66473.5 provides that "[n]o local agency shall approve a tentative tract map . . . unless . . . [it] is consistent with the general plan."

It is within the City's province, to balance the competing interests reflected in its General Plan policies, and the City has broad discretion to construe those policies in light of the plan's purposes. (San Franciscans Upholding the Downtown Plan, supra, at 678.) A reviewing court, therefore, may only ascertain whether the lead agency "considered the applicable policies and the extent to which the proposed project conforms with those policies" (id.) by considering whether, as a whole, the "'project is compatible with, and does not frustrate, the general plan's goals and policies" (Napa Citizens for Honest Government v. Napa County Board of Supervisors (2001) 91 Cal.App.4th 342, 355.) A project must be in agreement or in harmony with the applicable General Plan, "not in rigid conformity with every detail thereof." (San Franciscans Upholding the Downtown Plan, supra.)

A lead agency's determination that a project is consistent with its general plan "can be reversed only if based on evidence from which no reasonable person could have reached the same conclusion." (A Local and Regional Monitor v. City of Los Angeles (1993)16 Cal.App.4th 630, 648;

see also San Franciscans Upholding the Downtown Plan v. City and County of San Francisco (2002) 102 Cal.App.4th 656, 6771.) In approving the Project, the City considered its General Plan policies and the Project conformance to them.

Petitioners contend that the Project is inconsistent with the City's General Plan goals and policies to protect significant natural resources because its intrusions into the SEA and the floodplain are inconsistent with the General Plan requiring the developer to "enhance and preserve the SEA," and the EIR's conclusion that the project is consistent with Land Use Policy Element 5.3 by "not proposing development within the river" (2 AR 891) is not supported by the evidence in the record.

The EIR analyzes the original Project's consistency with the City's General Plan and concludes that the Project as originally proposed was consistent with Policy 1.1 of Goal I of the City's Open Space and Conservation Element because the Project preserves the Santa Clara River and much of its significant vegetation as open space (Tab 4, 2:2 AR 859-60) as shown by evidence noted above as to other issues. Furthermore, as discussed supra, the Project was later revised, further reducing the Project's overall intrusion into the SEA from 37 to 32.1 acres, and dedicating 37 undeveloped acres of SEA in the Round Mountain property.

The EIR also concludes that the Project as originally proposed was consistent with Policies 3.3 and 3.7 of Goal 3 of the City's Open Space and Conservation Element, because the EIR identifies areas of significant ecological value and natural riparian habitat and mitigates impacts to the extent possible (Tab 4, 2:2 AR 861-62: see also Tab 7. 5:2 AR 5689-5827 [RDEIR, § 4.6, Biological Resources]). Also, as

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discussed supra, the Project as approved further reduces impacts to the SEA and other sensitive resources.

The original Project was also found to be consistent with Policy 5.3 of Goal 5 to require new development to be sensitive to SEAs through creative planning techniques that avoid and minimize disturbance in these areas for these same reasons (Tab 4, 2:2 AR 890-91), a conclusion supported by the same substantial evidence that supports consistency with Goal 1, Policy 1.1 of the Open Space and Conservation Element.

Petitioners' arguments that the Project impermissibly intrudes into the SEA restate their CEQA arguments. The same evidence in the record supports the consistency findings. The Project was revised to limit intrusion into the SEA. The City's decision after circulation of the Draft EIR to protect the riparian resources and habitat by setting the resource line in the western portion of the site and moving the equestrian trail out of the river bed further ensured that the Project as approved was consistent with the General Plan policies. The Project always proposed placing 15 lots within the already disturbed SEA area next to Planning Area A-2. (See, e.g., Tab 7, 5:2 AR 5785.) Also, as revised Section 4.6 explains, even the permanent loss of 24 acres of habitat, now reduced to 16.9, is not expected to detract from the overall integrity and value of the SEA, and the Project will preserve and enhance various amounts of upland habitat in Planning Area B to serve as a buffer between the riparian habitat and development and to mitigate adverse impacts to riparian plant communities within the SEA. (Id.) The benefits of the Project's enhancements to the banks of the Santa Clara River and to its main drainage in the 29-acre park are confirmed by the Final EIR's Hybrid Functional Assessment for Riverpark (Tab 11, 9 AR 10877-90).

Substantial evidence supports the finding of consistency with the City's General Plan.

The Petition for Writ of Mandate is denied.

Counsel for Respondent is ordered to prepare, serve and lodge in Department 85 a proposed Judgment Denying the Petition for Writ of Mandate on or before August 21, 2006.

DATED: August 14, 2006

DZINTRA I. JANAVS

Dzintra I. Janavs
Judge of the Superior Court